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FCPA Update

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The FCPA Matures: A Look Back at Enforcement in 2010

Calendar year 2010 was a banner year for enforcement of the Foreign Corrupt Practices Act ("FCPA"). The year was quantitatively remarkable, with a record amount of total criminal fines, civil penalties and disgorgement payments, a record number of cases and a record prison term for an individual. The volume of FCPA cases was unprecedented, with the U.S. Department of Justice ("DOJ") filing 58 new enforcement actions[1] and the U.S. Securities and Exchange Commission ("SEC")

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[1] The DOJ enforcement actions filed in 2010 were: *U.S. v. Alcatel-Lucent, S.A.*, No. 10-CR-20907 (S.D. Fla. Dec. 27, 2010) (DPA) (plus three subsidiaries); *U.S. v. Granados, et al.*, No. 10-CR-20881 (S.D. Fla. Dec. 15, 2010) (Jorge Granados; Manuel Caceres); *U.S. v. RAE Systems, Inc.* (Dec. 10, 2010) (NPA); *U.S. v. Tidewater Marine Int., Inc.*, No. 10-CR-770 (S.D. Tex. Nov. 4, 2010) (DPA); *U.S. v. Transocean, Inc.*, No. 10-CR-768 (S.D. Tex. Nov. 4, 2010) (DPA); *U.S. v. Shell Nigeria Exploration and Production Company Ltd.*, No. 10-CR-767 (S.D. Tex. Nov. 4, 2010) (DPA); *U.S. v. Panalpina, Inc.*, No. 10-CR-765 (S.D. Tex. Nov. 4, 2010); *U.S. v. Panalpina World Transport (Holding) Ltd.*, No. 10-CR-769 (S.D. Tex. Nov. 4, 2010) (DPA); *U.S. v. Pride Forasol S.A.S.*, No. 10-CR-771 (S.D. Tex. Nov. 4, 2010); *U.S. v. Pride Int'l, Inc.*, No. 10-CR-766 (S.D. Tex. Nov. 4, 2010) (DPA); *U.S. v. Noble Corp.* (S.D. Tex. Nov. 4, 2010) (NPA); *U.S. v. Lindsey Manufacturing Co.*, No. 10-CR-1185 (C.D. Cal. Oct. 21, 2010); *U.S. v. Noriega, et al.*, No. 10-CR-1031 (C.D. Cal. Oct. 21, 2010) (Enrique Faustino Aguilar Noriega; Steve K. Lee; Keith E. Lindsey); *U.S. v. ABB Ltd.*, No. 10-CR-00664 (S.D. Tex. Sept. 29, 2010) (DPA); *U.S. v. ABB Inc.*, No. 10-CR-00664 (S.D. Tex. Sept. 29, 2010); *U.S. v. ABB Ltd. – Jordan*, No. 10-CR-00665 (S.D. Tex. Sept. 29, 2010); *U.S. v. Mercator Corp.*, S3 03-CR-404 (S.D.N.Y. Aug. 6, 2010); *U.S. v. Alliance One Int'l AG*, No. 10-CR-017 (W.D. Va. Aug. 6, 2010) (NPA); *U.S. v. Alliance One Tobacco Osh*, No. 10-CR-016 (W.D. Va. Aug. 6, 2010) (NPA); *U.S. v. Universal Leaf Tabacos Ltda.*, 10-CR-225 (E.D. Va. Aug. 6, 2010); *U.S. v. Bobby J. Elkin, Jr.*, No. 10-CR-015 (W.D. Va. Aug. 3, 2010); *U.S. v. Snamprogetti Netherlands*, B.V., No. 10-CR-460 (S.D. Tex. July 7, 2010) (DPA); *U.S. v. Technip*, No. 10-CR-439 (S.D. Tex. June 28, 2010) (DPA); *U.S. v. Goncalves et al.*, No. 09-CR-335 (D.D.C. Apr. 16, 2010) (superseding consolidated indictment of 22 individuals originally brought on Dec. 11, 2009); *U.S. v. Daimler AG*, No. 10-CR-063 (D.D.C. Mar. 22, 2010) (DPA); *U.S. v. Daimler/Chrysler Automotive Russia SAO*, No. 10-CR-064 (D.D.C. Mar. 22, 2010); *U.S. v. Daimler Export and Trade Finance GmbH*, No. 10-CR-065 (D.D.C. Mar. 22, 2010); *U.S. v. Daimler/Chrysler China Ltd.*, No. 10-CR-066 (D.D.C. Mar. 22, 2010) (DPA); *U.S. v. Innospec*, No. 10-CR-00061 (D.D.C. Mar. 18, 2010); *U.S. v. BAE Systems plc.*, No. 10-CR-035 (D.D.C. Feb. 9, 2010); *U.S. v. Bistrong*, No. 10-CR-0021 (D.D.C. Jan. 21, 2010). We have included the 22 individual SHOT show defendants because they were arrested in January 2010, even though the original indictments were filed under seal in December 2009. We have also included the August 2010 criminal information filed against Mercator, even though it is part of the Giffen action, which was originally filed in 2004. The BAE matter is included even though the company did not plead to any anti-bribery offenses; its settlement concerned alleged breaches of the False Statements Act in connection with certifications regarding its compliance program. *See* Erik C. Bierbauer, "BAE Settlement Highlights Enforcement Trends," *FCPA Update*, Vol. 1, No. 7 (Feb. 2010), http://www.debevoise.com/files/Publication/9ea573d9-b41c-477b-986101f17cee6c9c/Presentation/PublicationAttachment/887c2335-d8c4-4978-a824-23131f02b335/FCPAUpdateFebruary2010.pdf.

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filing 28 enforcement actions[2] against corporate entities and individuals. The 86 total enforcement actions in 2010 compare to 43 total enforcement actions in 2009.[3] Additionally, corporations and individuals collectively paid or agreed to pay a total of nearly $1.8 billion to the government to settle FCPA related charges in 2010. DOJ fines accounted for approximately $1.27 billion of this total, and SEC disgorgements and penalties accounted for approximately $500 million. This amount represents a substantial increase over 2009 ($600 million) and 2008 ($900 million).[4] In a case revealing the impact of the statute on individuals, Charles Jumet, in a matter involving Ports Engineering Consultants Corporation, was sentenced to the longest term of incarceration ever handed down for a FCPA-related conviction—87 months.[5]

The DOJ's and SEC's enforcement was also qualitatively distinguished in 2010. The SEC announced the first-ever settlement with a corporate entity that was not an issuer under the 1934 Securities Exchange Act, Panalpina, employing a novel agency

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2 The SEC enforcement actions filed in 2010 were: *SEC v. Alcatel-Lucent, S.A.*, No. 10-CV-24620 (S.D. Fla. Dec. 27, 2010); *SEC v. RAE Systems, Inc.*, No. 10-CV-02903 (D.D.C. Dec. 10, 2010); *SEC v. Transocean, Inc.*, No. 10-CV-01981 (D.D.C. Nov. 4, 2010); *In the Matter of Royal Dutch Shell plc*, 3 S.E.C. 14107 (Nov. 4, 2010); *SEC v. Tidewater Int'l, Inc.*, No. 10-CV-4180 (E.D. La. Nov. 4, 2010); *SEC v. Noble Corp.*, No. 10-CV-4336 (S.D. Tex. Nov. 4, 2010); *SEC v. Panalpina, Inc.*, No. 10-CV-4334 (S.D. Tex. Nov. 4, 2010); *SEC v. Pride Int'l, Inc.*, No. 10-CV-4335 (S.D. Tex. Nov. 4, 2010); *SEC v. Global Santa Fe*, No. 10-CV-01890 (D.D.C. Nov. 4, 2010); *SEC v. ABB Ltd.*, No. 10-CV-01648 (D.D.C. Sept. 29, 2010); *SEC v. Universal Corp.*, No. 10-CV-01318 (D.D.C. Aug. 6, 2010); *SEC v. Alliance One Int'l, Inc.*, No. 10-CV-01319 (D.D.C. Aug. 6, 2010); *SEC v. Summers*, No. 10-CV-02786 (S.D. Tex. Aug. 5, 2010); *SEC v. Turner*, No. 10-CV-01309 (D.D.C. Aug. 5, 2010) (David P. Turner; Ousama M. Naaman); *SEC v. General Electric Co.*, No. 10-CV-01258 (D.D.C. July 27, 2010) (GE Inonics, Inc.; GE Amersham plc); *SEC v. ENI S.p.A. et al.*, No. 10-CV-2414 (S.D. Tex. July 7, 2010) (ENI, S.p.A.; Snamprogetti Netherlands B.V.); *SEC v. Veraz Networks*, No. 10-CV-2849 (N.D. Cal. June 29, 2010); *SEC v. Technip, S.A.*, No. 10-CV-02289 (S.D. Tex. June 28, 2010); *SEC v. Elkin et al.*, No. 10-CV-00661 (D.D.C. Apr. 28, 2010) (Bobby J. Elkin; Baxter J. Myers; Thomas G. Reynolds; Tommy L. Williams); *SEC v. Innospec, Inc.*, No. 10-CV-00448 (D.D.C. Mar. 28, 2010); *SEC v. Daimler AG*, No. 10-CV-00463 (D.D.C. Mar. 22, 2010); *SEC v. NATCO Group Inc.*, No. 10-CV-98 (S.D. Tex. Jan. 11, 2010). GE was charged only with books-and-records and internal controls violations of the FCPA, not bribery violations.

3 Bruce E. Yannett, Sean Hecker, et al., "Trends for 2010 Part I," *FCPA Update*, Vol. 1, No. 6 (Jan. 2010), http://www.debevoise.com/files/Publication/e30fe6cd-dc6f-4549-bf39-71a3b7d2972b/Presentation/PublicationAttachment/0773937e-9b35-4b4d-93e8-892f05488f86/FCPAUpdateJanuary2010.pdf. The 86 total enforcement actions in 2010, however, are somewhat overstated because the DOJ and SEC jointly brought many enforcement actions, and in several cases, the SEC and DOJ charged multiple affiliated companies for the same underlying activity. The DOJ and SEC actually brought a combined total of 22 independent enforcement actions against companies. Together, the DOJ and SEC also brought 36 independent enforcement actions against individuals in 2010 (including the 22 individuals arrested as part of the SHOT show raids in January 2010).

4 *Id.*

5 DOJ Press Rel. 10-442, Virginia Resident Sentenced to 87 Months in Prison for Bribing Foreign Government Officials: Longest Prison Sentence Ever Imposed Related to Foreign Corrupt Practices Act (FCPA) Violations (Apr. 19, 2010), html://www.justice.gov/opa/pr/2010/April/10-crm-442.html. On the increasing prosecution of individuals, *see also*, Sean Hecker and Christopher M. Russell, "Prison Sentences, Fines, and Forfeitures in Recent Cases Against Individuals," *FCPA Update*, Vol. 2, No. 2 (Sept. 2010), http://www.debevoise.com/files/Publication/867154b8-ceaf-467d-9a53-eb60a063e316/Presentation/PublicationAttachment/a77fe189-f722-4bb0-8505-0abd5f1224ac/FCPAUpdateSeptember2010.pdf.

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theory as the basis for liability.[6] In conjunction with a more aggressive posture toward FCPA-related crimes and civil violations, the DOJ and SEC stepped up industry-wide enforcement reviews, calling on numerous companies in specific industries to provide information based apparently on generalized risks of corruption in those sectors. The government also rolled out more aggressive law-enforcement tactics, deploying wiretaps, informants, and the detention of material witnesses as they transited through the United States.[7] The DOJ now has a dedicated unit of FCPA prosecutors with more than a dozen attorneys focusing solely on FCPA-related cases.[8] Within the DOJ, the FCPA unit also teamed with the Asset Forfeiture and Money Laundering Section[9] to launch a "Kleptocracy Asset Recovery Initiative" to recover ill-gotten proceeds that were laundered through the United States.[10] Meanwhile, the SEC announced that its new FCPA unit would develop ways to be "more proactive" about enforcement.[11]

These quantitative and qualitative changes occurred in the context of continued strong public support from government officials. In conjunction with the United Nations' International Anti-Corruption Day[12] on December 9, 2010, Secretary of State Hillary Clinton declared that the United States believes "[c]orruption stunts economic growth, damages confidence in democracy, and fosters a culture of graft and impunity that undermines the ability to operate in our interconnected world."[13] Bringing even greater attention to this point, President Barack Obama, during his 2011 State of the Union address, said, "[a]round the globe, we're standing with those who take responsibility—helping farmers grow more food, supporting doctors who care for the sick, and combating the corruption that can rot a society and rob people of opportunity."[14]

In conjunction with a more aggressive posture toward FCPA-related crimes and civil violations, the DOJ and SEC stepped up industry-wide enforcement reviews, calling on numerous companies in specific industries to provide information based apparently on generalized risks of corruption in those sectors.

Speaking at the United Nations, Assistant Attorney General Lanny Breuer called corruption "one of the most pressing problems the world faces" and declared that the DOJ is committed to the "battle" against corruption.[15] Then-Deputy Attorney General Gary Grindler, speaking at a meeting of the World Bank in

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6 SEC Litig. Rel. 21727, SEC Charges Panalpina with Violating Foreign Corrupt Practices Act (Nov. 4, 2010), http://www.sec.gov/litigation/litreleases/2010/lr21727.htm; ***see also*** DOJ Press Rel. 10-1251, Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than $156 Million in Criminal Penalties: SEC and Companies Agree to Civil Disgorgement and Penalties of Approximately $80 Million (Nov. 4, 2010), http://www.justice.gov/opa/pr/2010/November/10-crm-1251.html.

7 *See* USAO Press Rel., S.D. Fla., Alcatel-Lucent S.A. and Three Subsidiaries Agree to Pay $92 Million to Resolve Foreign Corrupt Practices Act Investigation (Dec. 27, 2010), http://www.justice.gov/usao/fls/PressReleases/101227-01.html.

8 Lanny A. Breuer, Asst. Attorney General, Remarks at the 24th National Conference on the Foreign Corrupt Practices Act, National Harbor, M.D. (Nov. 16, 2010), http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101116.html.

9 DOJ, Asset Forfeiture and Money Laundering Section, http://www.justice.gov/criminal/afmls.

10 Breuer, note 8, *supra*.

11 Cheryl J. Scarboro, Chief of the FCPA Unit, SEC, Remarks at News Conference Announcing New SEC Leaders in Enforcement Division, Washington, D.C. (Jan. 13, 2010), http://www.sec.gov/news/speech/2010/spch011310newsconf.htm ("A primary mission of [the FCPA Unit] is to devise ways for [the SEC] to be more proactive in our enforcement of the FCPA. Members of the FCPA Unit will gain in-depth knowledge of industries and regional practices so we can uncover corrupt practices that might otherwise go undetected. We will also conduct more targeted sweeps and sector-wide investigations, alone and with other regulatory counterparts both here and abroad."). Although occurring in early 2011, an example of the SEC's more proactive approach to FCPA enforcement may be the recent industry wide sweep involving numerous financial firms and their dealings with sovereign wealth funds. *See* Dionne Searcey & Randall Smith, "SEC Probes Banks, Buyout Shops Over Dealings with Sovereign Funds," *Wall Street Journal* (Jan. 14, 2011), http://online.wsj.com/article/SB10001424052748704307404576080403625366100.html; *see also* Peter Lattman & Michael De La Merced, "SEC Looking into Deals with Sovereign Funds," *N.Y. Times Deal Book* (Jan. 13, 2011), http://dealbook.nytimes.com/2011/01/13/s-e-c-looking-into-deals-with-sovereign-funds/.

12 *See* United Nations, International Anti-Corruption Day, http://www.un.org/en/events/anticorruptionday.

13 Hillary Rodham Clinton, Secretary of State, Remarks: International Anti-Corruption Day, Washington, D.C. (Dec. 8, 2010), http://www.state.gov/secretary/rm/2010/12/152579.htm.

14 President Barack Obama, Remarks by the President in State of Union Address, Washington, D.C. (Jan. 25, 2011), http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address.

15 Lanny A. Breuer, Asst. Attorney General, Remarks at the United Nations for International Anti-Corruption Day, New York, N.Y. (Dec. 9, 2010), http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101209.html.

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Washington, D.C., portrayed corruption as a "common enemy," and argued that corruption "only hurts business" by (1) "extracting a tremendous shadow tax," (2) stifling competition, (3) undermining contractual obligations, and (4) disrupting the proper functioning of governments.[16]

All of these indicators suggest, as Assistant Attorney General Breuer announced: "[W]e are in a new era of FCPA enforcement."[17] This is undoubtedly true as compared to the level of enforcement 10 or 20 years ago. But to appreciate fully the developments of 2010, they must be considered in the context of the evolution of FCPA enforcement over the past three decades. None of last year's developments occurred in isolation, and all can variously be traced to historical trends, long-term institutional changes, and broad reforms that befit a statute central to the regulation of international business. In short, the year 2010 marked the maturation of FCPA enforcement. In the sections below, we review some of the important developments in 2010 in the context of the FCPA's evolution, and look toward the future.

Emphasis on Benefits of Compliance Programs

Prevention has long been the lynchpin of a company's defense against potential FCPA violations. The DOJ has encouraged companies to create and enforce comprehensive FCPA compliance programs that address a broad range of policies, including those pertaining to the provision of meals, entertainment, travel, gifts; charitable donations to foreign officials or those affiliated with them; due diligence of sales intermediaries; merger, acquisition and joint venture transactions; interactions with non-U.S. government employees; and relationships with third parties in general. Prior to 2010, however, the DOJ rarely, if ever, publicly acknowledged rewarding companies for having a strong compliance program in place at the time an offense occurred. Historically, the DOJ publicly acknowledged rewarding companies if they took remedial measures and implemented a strong compliance program *after* a violation had occurred. But for companies with strong compliance programs, the DOJ's calculus seemed to be "all or nothing"—if a self-reported event was deemed sufficiently inconsequential or aberrational in light of a strong pre-existing compliance program, prosecution was declined (and without any publicity, per the usual practice); if not, even a strong compliance program at the time of a violation did not seem to count for much, at least based on DOJ's public statements.

This practice—or the appearance of this practice—in effect made it difficult for companies to know exactly what the government considered an effective compliance program. Furthermore, companies could not easily evaluate the actual value of the extensive time and resources spent on developing a strong compliance program. The Organization for Economic Cooperation and Development ("OECD") Working Group on Bribery expressed these concerns in its peer review report of the application of anti-bribery laws in the United States.[18] The Working Group interviewed a number of companies subject to FCPA enforcement, which "questioned whether there was any real incentive to look for past misconduct."[19] The report recommended that the DOJ "make public in each case in which a DPA [deferred prosecution agreement] or NPA [non-prosecution agreement] is used, more detailed reasons on the choice of a particular type of agreement; the choice of the agreement's terms and duration; and the basis for imposing monitors."[20]

Toward the end of 2010, the DOJ announced in three cases that it seriously valued pre-existing compliance programs: (1) Noble Corporation, a Swiss oil-and-gas company, agreed to an NPA with the DOJ as part of a larger global settlement involving Panalpina World Transport and

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16 Gary G. Grindler, Acting Deputy Attorney General, Remarks at a World Bank International Meeting, Washington, D.C. (Dec. 8, 2010), http://www.justice.gov/iso/opa/dag/speeches/2010/dag-speech-101208.html.

17 *See* Breuer, note 8, *supra*; *see also*, Lanny A. Breuer, Asst. Attorney General, Remarks to Compliance Week 2010 – 5th Annual Conference for Corporate, Financial, Legal, Risk, Audit, & Compliance Officers (May 26, 2010), http://www.justice.gov/criminal/pr/speeches-testimony/2010/05-26-10aag-compliance-week-speech.pdf.

18 See OECD, "United States: Phase 3 – Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions," (Oct. 15, 2010), http://www.oecd.org/dataoecd/10/49/46213841.pdf.

19 *Id*. at 30.

20 *Id*. at 62.

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other companies in the oil-and-gas industry.[21] Noble admitted that it paid approximately $74,000 to a Nigerian freight forwarding agent; certain employees knew that some of the payments would be passed on as bribes to Nigerian customs officials; and the company falsely recorded the bribe payments as legitimate business expenses in its corporate books, records and accounts.[22]

As part of its NPA, Noble agreed to pay a $2.59 million criminal fine and $5.5 million more as a disgorgement of ill-gotten gains.[23] Noble's fine, however, was the lowest among the entire Panalpina settlement group, and the DOJ specifically cited "the existence of Noble's pre-existing compliance program and steps taken by Noble's Audit Committee to detect and prevent improper conduct from occurring."[24] The NPA went on to describe Noble's pre-existing compliance program, noting that it forbade the improper acts that were ultimately committed by several individuals.[25]

(2) Similarly, Global Industries, which announced in 2007 that it was being investigated for potential FCPA violations related to the same bribery scheme that ultimately ensnared Noble, Panalpina and the other oil-and-gas companies referenced above, completely avoided prosecution and civil liability. In March 2010, Global Industries announced that "representatives of the Securities and Exchange Commission and the Department of Justice informed the Company that each agency had concluded its FCPA investigation. Neither agency recommended any enforcement action or the imposition of any fines or penalties against the Company."[26]

The key difference between Global Industries and the other Panalpina-settlement companies is that Global Industries' internal compliance program detected the potential FCPA violation much earlier and the company immediately hired outside counsel and voluntarily disclosed the information to the government. Global Industries' General Counsel and Director of Compliance told *FCPA Blog* that "[h]aving gone through a two-and-a-half year investigation has been an eye opener. But it proved to us that a good compliance program does help, not only to identify potential problems when they arise, but also when you're in front of the DOJ and SEC."[27] In this case, Global Industries' compliance program likely saved it many millions of dollars in fines, penalties, and other costs arising from an FCPA prosecution. What is not known is how much the company spent on the two-and-a-half year investigation.

The key difference between Global Industries and the other Panalpina settlement companies is that Global Industries' internal compliance program detected the potential FCPA violation much earlier and the company immediately hired outside counsel and voluntarily disclosed the information to the government.

(3) Universal Leaf Tabacos Ltda. (Universal Brazil), a subsidiary of Universal Corporation, a Virginia-based worldwide purchaser and supplier of processed tobacco leaf, pleaded guilty to violating the anti-bribery and books and records provisions of the FCPA. Universal Brazil admitted making improper payments to officials of the government of Thailand to secure the sale of tobacco leaf to the Thailand Tobacco Monopoly from 2000 to 2004.[28] Universal Corporation agreed to an NPA, admitting the same underlying conduct of its subsidiary. As part of its plea agreement, Universal Brazil agreed to pay a $4.4 million criminal fine, which was 30% below the bottom of the low-end fine advised by the U.S. Sentencing Guidelines. In the Agreed Sentencing Memorandum, the DOJ explained that "[p]ursuant to Universal's internal compliance program,

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21 DOJ Press Rel. 10-1251, note 6, *supra*.

22 *Id.*

23 *Id.*

24 *United States v. Noble Corporation*, Non-Prosecution Agreement (DOJ-Criminal Div.), http://www.justice.gov/opa/documents/noble-npa.pdf.

25 *Id.*

26 "Compliance and Enforcement: By the Book," *The FCPA Blog* (Dec. 6, 2010), http://www.fcpablog.com/blog/2010/12/6/compliance-and-enforcement-by-the-book.html.

27 *Id.*

28 DOJ Press Rel. 10-903, Alliance One International Inc. and Universal Corporation Resolve Related FCPA Matters Involving Bribes Paid to Foreign Government Officials (Aug. 6, 2010), http://www.justice.gov/opa/pr/2010/August/10-crm-903.html.

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Universal maintained on its website an employee 'hotline' that allowed current and former employees to report improper conduct. It is because of this useful compliance initiative that the improper conduct came to light. The agreed upon disposition partly reflects credit given for Universal's pre-existing compliance program."[29] The DOJ also praised Universal Brazil for its voluntary disclosure, cooperation, and extensive remedial efforts.

With these three cases, the DOJ sent a welcome message that companies with robust compliance programs in place at the time an FCPA violation occurs may receive significant credit. This new message recognizes that companies should not always bear the full brunt of the law when individuals commit illegal acts despite every good faith effort by the company to prevent such acts.[30]

Dovetailing with the DOJ's actions above, on November 1, 2010, new revisions to the U.S. Sentencing Guidelines went into effect that provide clear incentives for companies to develop effective compliance and ethics programs. Section 8C2.5(f)(3)(C) of the Guidelines now offers a three-level offense level reduction for companies with a compliance and ethics program in place at the time of the offense, so long as the program meets certain criteria, the company self-reports the illegal conduct and cooperates with the government, and the company prevents further similar criminal conduct in the future.

Emphasis on Cooperation and Self-Reporting

Throughout 2010, the DOJ sought to emphasize the benefits of voluntary disclosure and cooperation with the government during investigations. In a speech at the 24th National Conference on the Foreign Corrupt Practices Act, Assistant Attorney General Breuer stated: "I can assure you that if you do not voluntarily disclose your organization's conduct, and we discover it on our own, or through a competitor or a customer of yours, the result will not be the same."[31] Mr. Breuer highlighted the Panalpina settlements as an example of "meaningful credit" the DOJ gave "for voluntarily disclosing their conduct and cooperating with our investigation."[32] He explained that "Panalpina engaged counsel to lead investigations encompassing 46 jurisdictions, hired an outside audit firm to perform forensic analysis, and promptly reported the results of its internal investigation in over 60 meetings and calls with the Department and the SEC."[33] As we have noted, the companies that voluntarily disclosed their conduct in the Panalpina bribery scheme and cooperated with the government paid relatively lower fines.[34]

In another recent case, Alcatel-Lucent, S.A. and three of its subsidiaries settled with the DOJ and SEC to resolve an FCPA investigation into the worldwide sales practices of Alcatel S.A. prior to its merger with Lucent Technologies, Inc.[35] Alcatel-Lucent entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay a $92 million criminal fine. It also agreed to disgorge

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29 *United States v. Universal Leaf Tabacos Ltda.*, No. 3:10-cr-00225, Agreed Sentencing Memorandum, n. 2 (E.D. Va.), http://www.justice.gov/criminal/fraud/fcpa/cases/docs/08-06-10universal-leaf-sentencing-memo.pdf.

30 Recently, Judge Lynn N. Hughes of the United States District Court for the Southern District of Texas refused to sentence ABB Ltd. as a recidivist violator of the FCPA because, in his view, the entire corporation could not be held responsible for the rogue actions of a few individuals. He stated: "to call the whole thing corrupt because there are corrupt individuals is a misstatement of reality." *United States v. ABB Inc.*, No. H-10-664, Transcript of Arraignment/Sentencing, at 11 (S.D. Tex. Sept. 29, 2010). Judge Hughes added: "[T]here is a failure rate of human beings, and no process is going to be able to anticipate who's going to turn bad." *Id.* at 12, 14. Liability for FCPA violations can, however, lead to severe results. If corruption has been deemed to have permeated the company, the DOJ has pushed for corporate dissolution. For example, Nexus Technologies pleaded guilty in 2010 to FCPA violations, "acknowledged that it operated primarily through criminal means," and agreed to cease all operations as a condition of its plea. DOJ Press Rel. 10-1032, Former Nexus Technologies Inc. Employees and Partner Sentenced for Roles in Foreign Bribery Scheme Involving Vietnamese Officials: Company Ordered to Turn Over Assets to Court, Cease All Operations (Sept. 16, 2010), http://www.justice.gov/opa/pr/2010/September/10-crm-1032.html.

31 *See* Breuer, note 8, *supra*.

32 *Id.*

33 *Id.*

34 *See* Sean Hecker and Aaron M. Tidman, "The Panalpina Settlements: Additional Evidence Concerning the Costs and Benefits of Cooperation with U.S. Authorities," *FCPA Update*, Vol. 2, No. 4 (Nov. 2010), http://www.debevoise.com/files/Publication/ad10aedb-1582-4e2e-b4bb-983a55cd6736/Presentation/PublicationAttachment/40a912f9-485a-45ef-89ca-be27b63b9ba6/FCPAUpdateNovember2010.pdf.

35 *See* DOJ Press Rel. 10-1481, Alcatel-Lucent S.A. and Three Subsidiaries Agree to Pay $92 Million to Resolve Foreign Corrupt Practices Act Investigation (Dec. 27, 2010), http://www.justice.gov/opa/pr/2010/December/10-crm-1481.html.

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$45.4 million. The government alleged that Alcatel paid bribes to government officials in Costa Rica, Honduras, Malaysia, and Taiwan over the course of several years in return for millions of dollars worth of telecommunications contracts.[36]

In its charging documents, the DOJ announced that Alcatel-Lucent's $92 million fine reflected "limited and inadequate cooperation by the company for a substantial period of time, but that after the merger, Alcatel-Lucent substantially improved its cooperation with the department's investigation."[37] In addition, the DOJ specifically credited "Alcatel-Lucent for, on its own initiative and at a substantial financial cost, making an unprecedented pledge to stop using third-party sales and marketing agents in conducting its worldwide business."[38] The DOJ, however, publicly noted that the settlement penalized Alcatel-Lucent for not immediately cooperating—it awarded the company only one point of credit under the U.S. Sentencing Guidelines rather than the usual two points for cooperation.[39]

The DOJ has clearly attempted to distinguish between companies that immediately and fully self-report and cooperate, and companies that do not. Even so, companies are still well-advised to weigh carefully, after consulting with experienced legal counsel, the costs and benefits of voluntary disclosure and cooperation, including the costs of internal disruption to the company, as well as expenditures for outside forensic analysts and attorneys to conduct a multi-jurisdictional internal investigation. Other potential costs include monitor fees, compliance remediation costs, subsequent private lawsuits, and regulatory fines. The central lesson from previous years remains: each situation is unique and should be carefully considered before any strategic decisions are made, including whether contractual or legal obligations compel disclosure.

International Enforcement and Global Cooperation

Increased International Enforcement

In today's interconnected world, the United States is no longer the lone enforcer of anti-bribery laws. Although the United States still brings many more enforcement actions than any other country, companies and individuals are now subject to liability for anti-bribery violations in multiple jurisdictions around the globe. According to Transparency International ("TI"), seven countries are now engaged in "Active Enforcement" of anti-bribery laws, including the United States, Germany, Norway and Switzerland, and three countries have been newly added to the TI list—the United Kingdom, Italy and Denmark.[40] In addition, nine countries are engaged in "Moderate Enforcement," including Argentina, Belgium, Finland, France, Japan, the Netherlands, South Korea, Spain and Sweden.[41] TI upgraded the United Kingdom from a "moderate" anti-bribery enforcer to an "active" enforcer primarily because of the U.K. Bribery Act, which, if it is implemented on schedule in April 2011, has the potential to be the biggest roadblock to international corruption since Congress passed the FCPA in 1977.

In today's interconnected world, the United States is no longer the lone enforcer of anti-bribery laws.

Other countries are vying for a piece of the anti-bribery pie. In December 2010, authorities in Malaysia and Honduras announced investigations of Alcatel-Lucent, which also paid $10 million to Costa Rican authorities to resolve bribery charges, marking the first time Costa Rica brought such an enforcement action against a foreign corporation. Nigeria, a country that ranks 134 out of 178 countries on TI's 2010 Corruption Perceptions Index, opened its own investigations of Halliburton,

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36 *Id.*

37 *Id.*

38 *Id.*

39 *See United States v. Alcatel-Lucent, S.A.*, No. 10-cr-20907, Deferred Prosecution Agreement (S.D. Fla.), http://www.mediafire.com/?5sm4hgiy7s5796v.

40 Transparency International, Progress Report 2010: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, at 8 (Jul. 28, 2010), http://www.transparency.org/content/download/57988/927658/3rd_Progress_Report_2010_OECD_Anti_Bribery_Convention.pdf.

41 *Id.*

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Snamprogetti, Panalpina, and Siemens. Although these actions might be a legitimate attempt to increase anti-bribery law enforcement in some of the more corrupt corners of the world, they appear to piggyback on U.S. investigations; rather than indicating new fronts in the anti-corruption wars. These follow-on actions tend mainly to signal that the collateral consequences of U.S.-initiated investigations may be higher than ever.

A recent decision by the U.S. Court of Appeals for the Fifth Circuit made clear that, in the United States at least, multiple prosecutions by multiple jurisdictions are a baseline risk for companies that engage in corrupt conduct and are subject to prosecution under the OECD Anti-Bribery Convention.[42] A three-judge panel unanimously held that the Convention does not bar prosecution by multiple national governments of the same conduct. Gi-Hwan Jeong, a South Korean national, was convicted in South Korea for bribing American public officials in exchange for their assistance in landing a telecommunications contract. After traveling to the United States, Jeong was arrested and prosecuted under the FCPA for the same underlying conduct. Jeong argued that the United States did not have jurisdiction, but the Fifth Circuit held that the plain language of the treaty did not prohibit two signatory countries from both bringing criminal proceedings under their respective implementing statutes.

Increased International Cooperation

Another hallmark of 2010 was an increase in international cooperation. The United States is working hand-in-hand with the United Kingdom and authorities in other countries in an effort to coordinate resources. Assistant Attorney General Breuer, in his November speech, declared that "this year has seen a substantial increase in our cooperation with our foreign counterparts...and we intend increasingly to rely on our foreign partners in future cases."[43] He cited several examples of cooperation from this past year, including the BAE Systems settlement and the Innospec settlement. The January 2010 arrests of 22 individuals in the military and law enforcement products industry involved the synchronized efforts of 150 FBI agents and London police executing search warrants in locations around the world.

This international co-operation has emerged notwithstanding substantial differences between the legal system in the United States and those in the countries with which the United States has cooperated.

In the United States, for example, government authorities expect companies and individuals to cooperate and conduct internal investigations. Settlements are a common part of the American legal system—most FCPA investigations result in a plea agreement, an NPA, or a DPA. In France, on the other hand, there are no plea agreements and therefore no ability for the government to incentivize cooperation. Moreover, France has a Blocking Statute[44] that strictly prohibits all persons from requesting, seeking or disclosing any financial, commercial or economic information that might constitute evidence in the context of foreign judicial or administrative proceedings, thus limiting the steps a company may take within the territory of France to investigate misconduct by its own employees or others acting at the behest of employees. The objective of the Blocking Statute is to prevent the extraterritorial application of foreign laws,[45] and the unstated but understood objective is to prevent the overreach of American laws in particular. The Alcatel-Lucent settlement with the DOJ and SEC represents one recent example of international cooperation adapting to cultural differences. Alcatel, a French company, made its best effort to work around the Blocking Statute and cooperate with the U.S. government, and in return the U.S. government gave credit for Alcatel's cooperation.

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42 *United States v. Jeong*, 624 F.3d 706 (5th Cir. 2010).

43 *See* Breuer, note 8, *supra*. Also showing the trend of cooperation and outreach by the U.S. authorities, the government continued to file Mutual Legal Assistance Treaty requests, with the SEC making 605 requests of foreign authorities and receiving 457 requests in FY 2010. *See* SEC, FY 2010 Performance and Accountability Report, Table 1.4 (Nov. 15, 2010), http://www.sec.gov/about/secpar/secpar2010.pdf. Although it cannot be readily ascertained from published data how many of these requests are FCPA-related, experience teaches that the figures contain a substantial number of such requests.

44 Law no. 68-678 of July 26, 1968, modified by Law no. 80-538 of July 16, 1980 (J.O. July 17, 1980); Cass. crim., Dec. 12, 2007, case 07-83228 (affirming a decision of the Paris Court of Appeal convicting a Franco-American lawyer on charges of violating the Blocking Statute).

45 *Id.*

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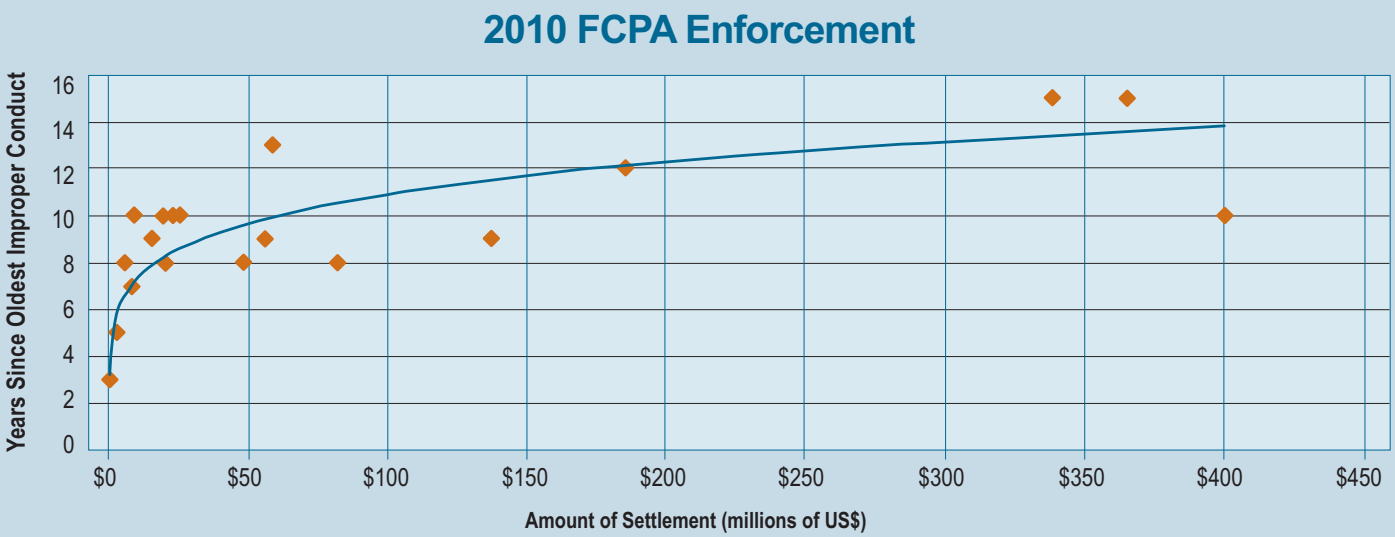

Reflection on 2010 and Looking Ahead to 2011

Enforcement in 2010 May Not Be the Norm Going Forward

Looking at the FCPA dispositions in 2010, it may appear that a new phase in the enforcement regime has begun. Enforcement is likely to remain intense as prosecutors deploy new resources and new tactics to ferret out more cases of wrongdoing. The future, however, may not necessarily involve ever greater fines and ever more cases. Our analysis of the cases resolved in 2010 reveals that most of the cases involved conduct that occurred many years prior, with some cases involving conduct originating in the early-1990s (see chart above).[46]

The year's three biggest settlements all involved conduct nearly a decade old: BAE Systems ($400 million) (2000 to 2002); Snamprogetti Netherlands B.V. ($365 million) (1995 to 2004); Technip S.A. ($338 million) (1995 to 2004). Although there were exceptions like Veraz Networks (conduct from 2007 to 2008), most cases settled in 2010 involved conduct that began more than half a decade ago. Moreover, some of the smallest settlements, *e.g.*, Veraz Networks ($300,000) and Natco ($65,000) were for conduct in the past few years. The total fines, penalties and disgorgement in cases involving conduct at least ten years old (BAE, Snamprogetti, Technip, Daimler, ABB, Innospec, GE, Alliance, Universal) was $1.4 billion, or 79% of the total fines, penalties and disgorgement in 2010. The total fines, penalties and disgorgement in cases involving conduct no more than 5 years old was $3,265,000.

These figures suggest that it is possible that 2010 may be an idiosyncratic year for FCPA enforcement as companies clean up old misdeeds. The DOJ and SEC were able to reach record-breaking settlements with issuers that had problems that dated back ten years or more. As companies address these issues in a more proactive way going forward, it may be possible that FCPA enforcement will not result in the same high total dollar figures for fines, penalties, and disgorgements seen in 2010. On the other hand, it is likely that new industries and companies will come within the FCPA's reach, evidence of long-running improper payments will surface, and enforcement records could continue to fall. The growth of the Internet, email and other social media that give rise to vast quantities of data; the continued pressure on bank secrecy jurisdictions and the companies that do business in such jurisdictions; social unrest that topples corrupt regimes; and the expansion of companies from countries without a strong compliance culture could give rise to new cases of corruption, and, possibly more

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[46] This chart is meant to provide a graphical representation of a sample of 2010 FCPA-related enforcement actions and is not meant to be comprehensive. The data points represent the following cases, listed in order of the size of total monetary payments required by the government to settle the matter, from largest to smallest: BAE, Snamprogetti, Technip, Daimler, Alcatel-Lucent, Panalpina, ABB, Pride, Shell, Innospec, GE, Transocean, Alliance, Tidewater, Universal, Noble, Global, RAE, Veraz, Natco. BAE did not plead guilty to any charge under the FCPA or to any bribery count in the United Kingdom, although it admitted conduct that could fairly lead to the conclusion that bribery occurred. The trend line is likewise meant to graphically represent the rough correlation between the financial terms imposed in these cases and the years since the oldest improper conduct involved and is not meant to suggest a statistically significant correlation between the two variables or to apply to the cases not included in the sample.

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important, more accessible evidence of corruption.

As the DOJ and SEC deploy new resources to investigate industries and practices that have not been prominent in FCPA enforcement in the past, the chance a slowdown will occur in FCPA enforcement seems quite low. Recently, in fact, Assistant Attorney General Breuer stated that DOJ's "FCPA enforcement is stronger than it's ever been—and getting stronger,"[47] and, as of January 2011, at least 71 companies appear to have disclosed that they are currently the subject of an ongoing FCPA-related investigation.[48]

In any case, our analysis of 2010 enforcement suggests that companies should proactively deal with problems as soon as possible after evidence of misconduct or "red flags" first surface, and, hopefully, long before they affect multiple years of business, exposing the company to ever larger liabilities for more extensive conduct.

Proactive Policing: Whistleblowers, the Dodd-Frank Act, and the Erosion of Bank Secrecy

One aspect of FCPA enforcement that will gain attention in 2011 concerns the implications of the newly passed Dodd-Frank Wall Street Reform and Consumer Protection Act ("the Dodd-Frank Act"), H.R. 4173. The Dodd-Frank Act provides for FCPA whistleblower payments from 10% to 30% of the total fines assessed by the SEC.[49] Under the SEC's proposed rules implementing this provision, the whistleblower must be a natural person who provides original information on his or her own accord and that information must be essential or contribute significantly to enforcement of the action.[50] In cases in which the recovery exceeds $1 million, if the SEC's proposed rules are implemented without change, the whistleblower will receive a bounty of between 10% to 30% of the total fine.[51] The SEC will similarly have discretion to determine the precise bounty within the 10% to 30% range for penalties over $1 million.[52] This new development in the FCPA enforcement regime may set off a race to report, as disgruntled employees seek to cash in on FCPA violations rather than reporting problems through internal compliance programs. Another development stemming from the Dodd-Frank Act is a new requirement for companies involved in resource extraction, *e.g.*, mining, oil and gas production, to disclose payments made to non-U.S. governments.[53] The SEC released proposed rules implementing this statutory requirement on December 15, 2010.[54] The new rules would apply to any company that is obligated to file annual reports with the SEC and "engages in the commercial development of oil, natural gas, or minerals."[55] As drafted, however, the rules hew very closely to the statutory language focusing the attention on payments to governments, as opposed to non-U.S. government officials. While the proposed rules are challenging in several ways, the SEC did not take the

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47 *See* Breuer, note 8, *supra*.

48 *See* "The Corporate Investigation List," *The FCPA Blog* (Jan. 4, 2011), http://fcpablog.squarespace.com/blog/tag/disclosure. *The FCPA Blog* also estimates that the DOJ has a total of 150 ongoing FCPA investigations and prosecutions. *See* "The 2011 Watch List," *The FCPA Blog* (Dec. 29, 2010), http://www.fcpablog.com/blog/2010/12/29/the-2011-watch-list.html.

49 Section 922(a) of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). *See* SEC Rel. No. 34-63237, Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities and Exchange Act of 1934 (Nov. 3, 2010), http://www.sec.gov/rules/proposed/2010/34-63237.pdf.

50 Paul R. Berger, Ed Schallert, et al., "The SEC's Draft Rules Implementing Dodd-Frank's Whistleblower Program," *FCPA Update*, Vol. 2, No. 4 (Nov. 2010), http://www.debevoise.com/files/Publication/ad10aedb-1582-4e2e-b4bb-983a55cd6736/Presentation/PublicationAttachment/40a912f9-485a-45ef-89ca-be27b63b9ba6/FCPAUpdateNovember2010.pdf.

51 *Id.*

52 *Id.*

53 Section 1504 of the of the Dodd-Frank Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010); *see also* "Landmark US legislation sheds light on billions in payments from oil and mineral companies," *Publish What You Pay* (July 16, 2010), http://www.publishwhatyoupay.org/en/resources/landmark-us-legislation-sheds-light-billions-payments-oil-and-mineral-companies.

54 SEC Press Rel. 2010-247, SEC Proposes Rules for Resource Extraction Issuers Under Dodd-Frank Act (Dec. 15, 2010), http://www.sec.gov/news/press/2010/2010-247.htm.

55 SEC Rel. 34-63549, Proposed Rule: Disclosure of Payments by Resource Extraction Issuers (Dec. 15, 2010), http://www.sec.gov/rules/proposed/2010/34-63549.pdf.

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opportunity, as some had predicted, to use the rules to require disclosure of significant new kinds of information that might lead to discovery of corrupt payments—that is, information relating to payments to officials, as opposed to governments—abroad.[56]

A potentially more powerful trend involves the erosion of bank secrecy. In the wake of several high-profile investigations of tax fraud involving bank accounts located in Switzerland, U.S. government officials are rethinking the secrecy of financial information and the ability of individuals to shield such information from reporting requirements. The Internal Revenue Service ("IRS") recently announced a proposed rule that would allow it routinely to share information about bank accounts with other governments to clamp down on tax evasion.[57]

Maturation of the Enforcement Regime

Passed in 1977, the Act is now more than three decades old and has gone through several phases of development. The 1998 amendments laid the groundwork for the new, aggressive enforcement regime we see today. In the early 2000s, FCPA enforcement rapidly grew, and last year's significant totals in both numbers of cases and value of settlements, many from cases that were pending for some time, illustrate a bi-partisan consensus for anti-bribery enforcement. Despite congressional[58] and public debates[59] about the future of the Act,[60] the fact that DOJ's Criminal Division derived half of the $2 billion in fines imposed in all of its cases in 2010 from FCPA-related actions is too powerful a statistic to ignore.[61] FCPA enforcement remains a significant risk for multi-national businesses. As the level of enforcement has increased, a related body of knowledge has evolved, including best compliance practices for avoidance of FCPA enforcement and best practices in the face of investigations. Political support for the Act has broadened and international cooperation is now expected. Critics and advocates alike accept the broad contours of the law, and the debate has shifted from whether the Act will be enforced and what effect that enforcement will have on business to how the Act will be enforced, how to clarify certain aspects of the statute, and what the ultimate enforcement regime should look like.

Despite congressional and public debates about the future of the Act, the fact that DOJ's Criminal Division derived half of the $2 billion in fines imposed in all of its cases in 2010 from FCPA-related actions is too powerful a statistic to ignore.

In short, the FCPA matured in 2010. Companies that do any business in the United States, otherwise utilize the instruments of United States commerce, or register their securities on United States exchanges cannot avoid the FCPA. The prohibition against bribery is now an established legal norm, at least in many developed countries.[62] The only viable

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56 *See* "Financial Reform School," *The FCPA Blog* (July 19, 2010), http://www.fcpablog.com/blog/2010/7/19/financial-reform-school.html; "Financial Reform Bill Contains Major Compliance Headache," *FCPA Professor* (July 16, 2010), http://fcpaprofessor.blogspot.com/2010/07/financial-reform-bill-contains-major.html; *see also*, "S. 1700 … A Bad Bill," FCPA Professor (Oct. 29, 2009), http://fcpaprofessor.blogspot.com/2009/10/s-1700-bad-bill.html.

57 IRS, Notice of Proposed Rulemaking, REG-146097-09: Guidance on Reporting Interest Paid to Nonresident Aliens (Jan. 7, 2011), http://www.gpo.gov/fdsys/pkg/FR-2011-01-07/pdf/2011-82.pdf; *see also*, James Quinn, "Swiss take next step to end bank secrecy," *The Telegraph* (June 4, 2010), http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/7801358/Swiss-take-next-step-to-end-bank-secrecy.html. *See generally* OECD, "OECD assessment shows bank secrecy as a shield for tax evaders coming to an end" (Aug. 31, 2009), http://www.oecd.org/document/40/0,3343,en_2649_37427_43582376_1_1_1_1,00.html.

58 *See* Paul R. Berger & Amanda M. Ulrich, "Senator Calls for Get-Tough Approach to FCPA Enforcement at Committee Hearing," *FCPA Update*, Vol. 2, No. 5 (Dec. 2010), http://www.debevoise.com/files/Publication/4df5aee3-63ac-470f-8be9-96a4ff95fd90/Presentation/PublicationAttachment/1a676acf-8a62-475c-84b7-c01eb5f98d99/FCPAUpdateDecember2010.pdf.

59 Andrew Weissmann & Alixandra Smith, "Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act," *U.S. Chamber Institute for Legal Reform* (Oct. 27, 2010), http://www.instituteforlegalreform.com/restoring-balance-proposed-amendments-to-the-foreign-corrupt-practices-act.html.

60 *See, e.g.*, Bill Summary and Status, H.R. 5366: Overseas Contractor Reform Act (introduced May 20, 2010), http://www.govtrack.us/congress/bill.xpd?bill=h111-5366.

61 DOJ Press Rel. 11-085, Department of Justice Secures More Than $2 Billion in Judgments and Settlements as a Result of Enforcement Actions Led by the Criminal Division (Jan. 21, 2011), http://www.justice.gov/opa/pr/2011/January/11-crm-085.html.

62 *See U.N. Convention Against Corruption*, Foreword, G.A. Res. 58/4 (Oct. 31, 2003), http://www.unodc.org/unodc/en/treaties/CAC/ ("Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish."); *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Preamble, (Nov. 21, 1997), http://www.oecd.org/dataoecd/4/18/38028044.pdf ("[B]ribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions."); *OAS Inter-American Convention Against Corruption*, Preamble, (Mar. 29, 1996), http://www.oas.org/juridico/english/treaties/b-58.html ("The Member States of the Organization of American States, [are] convinced that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as the comprehensive development of peoples.").

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option for companies looking to avoid the costs of enforcement actions is to work within the confines of the Act by instituting rigorous compliance regimes and responding aggressively to improper activity. Like any mature enforcement regime, the world of the FCPA will continue to evolve. Congress may make minor changes to the Act, enforcement priorities may ebb and flow, and the courts may curb prosecutors' powers as more cases are litigated. But what 2010 makes clear is that the broad contours of an aggressive enforcement regime are here to stay. ■

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