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FCPA Update

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Esquenazi Sentence of 15 Years in Prison More than Doubles Previous FCPA Record

On October 25, 2011, U.S. District Court Judge Jose E. Martinez of the Southern District of Florida sentenced Joel Esquenazi and Carlos Rodriguez to significant prison terms following their convictions after a jury trial in August 2011.[1] Esquenazi's sentence of 15 years was more than two times greater than the previously longest sentence imposed for substantive violations of the FCPA.[2] Rodriguez was sentenced to seven years imprisonment, a substantial term that pales in comparison to his co-defendant's but still ranks among the three longest terms of imprisonment imposed for FCPA violations. The court also ordered each defendant to pay, jointly and severally, $3.09 million in forfeiture.[3] Both defendants have filed notices of appeal.

The sentences are also noteworthy because the bribery scheme underlying the convictions – while substantial and pervasive – was far smaller in scope and size than many schemes identified in previous corporate resolutions of FCPA matters that have not resulted in individual prosecutions to date. We describe here some of the factors that led to Esquenazi's record sentence and seek to analyze what distinguished Esquenazi from previous FCPA prosecutions of individuals who received more lenient punishment.

Overview of Charges and Jury Verdict

The charges against Esquenazi and Rodriguez arose from a multi-year bribery scheme implemented by their Miami-based company, Terra Telecommunications Corp. ("Terra"). Esquenazi was the president and a 75% owner of Terra and, according to the government's

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1 *See* DOJ Press Rel. 11-1407, Executive Sentenced to 15 Years in Prison for Scheme to Bribe Officials at State-Owned Telecommunications Company in Haiti (Oct. 25, 2011), http://www.justice.gov/opa/pr/2011/October/11-crm-1407.html.

2 Prior to *Esquenazi,* the longest prison sentence for FCPA offenses was the 87-month sentence imposed upon Charles Jumet. *See* DOJ Press Rel.10-442, Virginia Resident Sentenced to 87 Months in Prison for Bribing Foreign Government Officials (Apr. 19, 2010), http://www.justice.gov/opa/pr/2010/April/10-crm-442.html.

3 *United States v. Esquenazi et al.*, No. 1:09-cr-21010-JEM, Order of Forfeiture (S.D. Fla. Oct. 24, 2011), at 2-3 (ordering forfeiture of $2.2 million for bribery related counts, and forfeiture of $893,818.50 for money laundering counts).

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theory, the orchestrator and leader of the bribery scheme. Rodriguez was an executive vice president and 20% owner.[4]

Prosecutors alleged that Terra paid more than $890,000 between 2001 and 2005 to officials of a state-owned Haitian telecommunications entity in exchange for substantial business in the Haitian fixed-line network market. The defendants were found guilty of conduct relating to the authorization of payments to a variety of shell companies that were ultimately intended for directors of international relations at Haiti Teleco, the exclusive provider of landline phone service in the country. Terra apparently made the illicit payments in order to obtain from Haiti Teleco preferred telecommunications rates and to maintain Terra's telecommunications connection with Haiti. The government also charged the Terra executives with manufacturing false invoices and records to disguise sham consulting services.

The jury convicted the executives in August 2011 following a two and a half week trial, finding them guilty of all charges in the 21-count indictment. The charges included one count of conspiracy to violate the FCPA and wire fraud; seven counts of substantive FCPA violations; one count of money laundering conspiracy; and twelve counts of money laundering.[5]

Esquenazi and Rodriguez are only the latest in a long and growing list of individuals who have been convicted under the FCPA and/or other federal statutes in the Haiti Teleco matter. In fact, with the exception of the ongoing "SHOT Show" sting cases, the Haiti Teleco matter has involved the largest number of individual FCPA prosecutions to date. Others who have been convicted and sentenced for their respective roles in the scheme include a former controller at Terra who entered a guilty plea and was sentenced to 24 months; two persons who forwarded bribes as middlemen to Haitian officials and who, following their guilty pleas, received sentences of 57 months and six months, respectively; and a recipient of the funds, a former director for Haiti Teleco, who pleaded guilty to money laundering after having received more than $1 million in bribes and was sentenced to a prison term of 48 months. It is unlikely that Esquenazi and Rodriguez are the last individuals to be held to account for the bribery scheme in the Haiti Teleco case.[6] A superseding indictment accuses one company and five natural persons (including the other Haiti Teleco director who is said to have received bribes) of foreign bribery and/or money laundering; no trial date has been set.[7]

Analysis of Esquenazi's Sentence

Documents in the Esquenazi matter's court docket provide a window into the rationale for his long sentence. His pre-sentence investigation report ("PSR") identified several

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4 *See Esquenazi*, No. 1:09-cr-21010-JEM, Indictment (S.D. Fla. Dec. 8, 2009), at 3.

5 *Id.* Days before the sentencing of Esquenazi and Rodriguez, the district court denied their motion for acquittal or a new trial notwithstanding the jury verdict pursuant to Fed. R. Crim. P. 29 and 33. The defendants had argued, *inter alia*, that a signed statement by the Haitian Prime Minister to the effect that Haiti Teleco was not a state enterprise invalidated their conviction because an essential element of the FCPA offense – that the bribe recipient is a public official – had not been proven. In denying the motion, the district court pointed out that the Prime Minister's statement did not constitute new evidence and that, according to witness testimony during trial, Haiti Teleco was a state instrumentality during the relevant period. *See Esquenazi*, No. 1:09-cr-21010-JEM, Order Denying Defendants' Motion for Judgment of Acquittal or New Trial (S.D. Fla. Oct. 14, 2011), at 5.

6 *See* DOJ Press Rel., note 1, *supra*.

7 *Id.*

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enhancements under the U.S. Sentencing Guidelines to arrive at an offense level of 40 and a recommended guideline sentence of 292-365 months.[8] Judge Martinez overruled Esquenazi's objections to various enhancements, yet he concluded that a sentence within the recommended guideline range would be unduly harsh. The Judge instead imposed a 180-month sentence pursuant to 18 U.S.C. § 3553(a), which sets out the factors judges shall consider in choosing an adequate sentence.

The primary contributor to the length of Esquenazi's sentence was the term issued for the money laundering counts, rather than the FCPA counts. The Judge imposed a 60-month sentence on Esquenazi for each of the eight FCPA counts, to be served concurrently.[9] The bulk of the sentence, however, emanated from Esquenazi's conspiracy to commit money laundering and the substantive money laundering violations, for which the Judge sentenced him to 120 months per count, to run concurrently to each other but consecutively to the term imposed under the FCPA counts.[10]

Esquenazi's leadership role in what prosecutors described as a complex bribery scheme appears to have materially factored into the lengthy sentence. Judge Martinez accepted the government's arguments that Esquenazi was the driving force in devising and carrying out the bribe payments and, as president and majority owner of Terra, enlisted several Terra employees in furtherance of the plan. The Judge also rejected the defendant's objection to the characterization of the bribery scheme as "sophisticated" and agreed with the government that the use of multiple shell companies and bank accounts that were opened for the purpose of channeling payments to the Haitian officials implied a complex and sophisticated scheme as defined in the Sentencing Guidelines.[11]

Finally, Esquenazi's four-day testimony at trial did not help his cause. According to the Judge's remarks at sentencing, Esquenazi conveyed no sense of wrongdoing on the witness stand and his attitude came across as "very, very arrogant" to the jury.[12] More importantly, Esquenazi's answers in the face of highly probative evidence strained credulity to such an extent that Judge Martinez agreed to an extraordinary enhancement for obstruction of justice.[13]

How Esquenazi's Sentence Compares to Other Recent Convictions

Because Esquenazi's sentence significantly exceeds that of all prior individual FCPA defendants convicted at trial, we sought to decipher factors that distinguish Esquenazi from other FCPA offenders. To a large degree, the length of Esquenazi's sentence appears to be the product of his role as the president/owner of Terra and principal perpetrator of the bribery scheme who did not cooperate in the government's investigation.

The most immediate comparison to Esquenazi's sentence is that of his co-defendant Rodriguez. Both individuals faced the same 21-count indictment and both went to trial instead of striking a plea deal with the government. The calculation of their recommended guideline ranges pursuant to the PSR was largely similar; the only differences in the calculations pertained to Esquenazi's enhancements of four levels for being a leader in the illegal conduct and two levels for obstruction of justice. This resulted in an offense level of 40 for Esquenazi and a guideline sentence of 292-365 months. The PSR placed Rodriguez's offense level at 34, which translates into a guideline sentence of 151-188 months. In light of their actual sentences of 180 and 84 months, respectively, both defendants benefited from the Judge's significant downward departure from the guideline range. Indeed, the downward departure for Esquenazi of 112 months from the low end of the recommended guideline range was – in absolute terms – significantly greater than for Rodriguez, whose downward departure from the low end of his guideline range was 67 months.[14] Under this comparative measure, the Judge's imposition of

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8 Esquenazi's guideline calculation included a 16-level enhancement due to the $2.2 million loss caused to the treasury of Haiti; a four-level enhancement for being an organizer or leader of the criminal activity; a cumulative four-level enhancement for the sophisticated money laundering operation; and a two-level enhancement for obstruction of justice resulting from his perjury on the witness stand. *See Esquenazi*, No. 1:09-cr-21010-JEM, Government's Response to Defendant Joel Esquenazi's Objection to Pre-Sentence Investigation Report (S.D. Fla. Oct. 3, 2011); *Esquenazi*, No. 1:09-cr-21010-JEM, Transcript of Sentencing Hearing (S.D. Fla. Oct. 25, 2011), at 33.

9 *Esquenazi,* No. 1:09-cr-21010-JEM, Judgment in a Criminal Case (S.D. Fla. Oct. 26, 2011), at 6.

10 *Id.*

11 *Esquenazi*, Transcript of Sentencing Hearing, at 23-24.

12 *Id.* at 29.

13 As the government pointed out, an enhancement for obstruction of justice is appropriate in cases in which the court finds the defendant guilty of perjury due to "denials, poor recollection, and false testimony […] in the light of all the credible evidence to the contrary." *Esquenazi*, Government's Response to Defendant Joel Esquenazi's Objections to Pre-Sentence Investigation Report, at 6 (quoting *United States v. Geffrards*, 87 F.3d 448 (11th Cir. 1996)).

14 In percentage terms, Esquenazi's sentence constituted approximately a 41% reduction from the bottom end of his guideline range. Rodriguez's sentence constituted approximately a 45% reduction from the bottom end of his guideline range.

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Esquenazi's lengthy sentence appears less harsh than at first blush.

Another contributing factor to Esquenazi's lengthy sentence was that other members of Terra's bribery scheme with less culpability had previously pleaded guilty and cooperated with the government but nevertheless received significant sentences. Juan Diaz was sentenced to 57 months in prison in July 2010 following his guilty plea for serving as a middleman to facilitate the bribe payments through a sham company. Antonio Perez, Terra's controller, pleaded guilty to one count of conspiracy to violate the FCPA and money laundering and received a 24-month sentence in January 2010. Robert Antoine, the former Haiti Teleco director who collected almost $1 million in bribes, pleaded guilty in March 2010 to conspiracy to commit money laundering and received a 48-month sentence. And Jean Fourcand, another middleman for the bribes, received a six-month prison sentence in May 2010 after pleading guilty to one count of money laundering.[15] Set against these relatively lengthy sentences imposed in the same matter on cooperating defendants, Esquenazi's prison term becomes less surprising considering his role and stature.

When comparing Esquenazi's sentence to those of the other individual defendants in recent FCPA prosecutions who have been convicted after trial, the severity of his sentence (and to a somewhat lesser degree, that of his co-defendant) remains apparent. Although many individual defendants have pleaded guilty to FCPA-related charges, it appears that within the last three years only three other cases have gone to trial and produced convictions for substantive FCPA violations.[16]

- Frederic Bourke was convicted of one count of conspiracy to violate the FCPA in a jury trial in 2009 due to his alleged conscious avoidance of the severe likelihood that funds he provided would be used to bribe public officials in Azerbaijan. While the government had requested a 10-year sentence, Judge Scheindlin of the Southern District of New York sentenced Bourke to one year and one day in prison and a fine of one million dollars, substantially deviating from the calculated guideline range of 57-71 months.[17]
- Gerald and Patricia Green were convicted by a jury in 2009 for making corrupt payments of $1.8 million to a Thai tourism ministry official in return for obtaining contracts to produce the Thai film festival.[18] The Greens had been indicted on multiple counts of violating the FCPA and money laundering, as well as conspiracy and income tax return violations. Judge Wu of the Central District of California sentenced the Greens to six months in prison (plus restitution of $250,000 and significant forfeiture of property), staying far below the government's requested sentence of ten years and departing significantly from the low end of the PSR's guideline range of 235 months.[19]
- In the *Lindsey* case, in May 2011 two company executives (as well as their employer, Lindsey Manufacturing) were found guilty after trial of conspiracy to violate the FCPA and substantive FCPA violations; a Mexican intermediary was found guilty of conspiracy to engage in money laundering.[20] Due to a flurry of post-trial motions challenging the convictions, sentencing has not yet taken place.

The particularized circumstances of the *Bourke* and *Green* cases help to explain the far more lenient sentencing in those cases compared to Esquenazi. Bourke was not a principal figure in the bribery scheme and merely was accused of having acted with conscious avoidance of the risk that an ill-reputed middleman, Victor Kozeny, would use investment funds provided by Bourke in a corrupt manner. At sentencing, Judge

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15 *See* DOJ Press Rel., note 1, *supra*.

16 In 2009, a jury found former Congressman William Jefferson guilty of eleven corruption charges, although he was acquitted of the substantive FCPA violation charge. He was sentenced by Judge Ellis of the Eastern District of Virginia to a prison term of 13 years. The primary focus of the case concerned Jefferson's solicitation of bribes and abuse of the power of his office, although he was also found guilty of one count that included conspiracy to violate the FCPA. Accordingly, Jefferson's conviction and sentence do not squarely fall within the individuals convicted of FCPA violations after trial, and thus a comparison of his sentence to the above-described examples is not especially relevant. *See* DOJ Press Rel. 09-1231, Former Congressman William J. Jefferson Sentenced to 13 Years in Prison for Bribery and Other Charges (Nov. 13, 2009), http://www.justice.gov/opa/pr/2009/November/09-crm-1231.html.

17 DOJ Press Rel. 09-1217, Connecticut Investor Frederic Bourke Sentenced to Prison for Scheme to Bribe Government Officials in Azerbaijan (Nov. 11, 2009), http://www.justice.gov/opa/pr/2009/November/09-crm-1217.html.

18 DOJ Press Rel. 09-952, Film Executive and Spouse Found Guilty of Paying Bribes to a Senior Thai Tourism Official to Obtain Lucrative Contracts (Sept. 14, 2009), http://www.justice.gov/opa/pr/2009/September/09-crm-952.html.

19 *See United States v. Green*, No. 2:08-cr-00059-GW, Government's Sentencing Memorandum (C.D. Cal. Jan. 14, 2010), at 1, http://www.justice.gov/criminal/fraud/fcpa/cases/greeng/01-14-10green-sent.pdf.

20 *See* DOJ Press Rel. 11-596, California Company, Its Two Executives and Intermediary Convicted by Federal Jury in Los Angeles on All Counts for Their Involvement in Scheme to Bribe Officials at State-Owned Electrical Utility in Mexico (May 10, 2011), http://www.justice.gov/opa/pr/2011/May/11-crm-596.html.

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Scheindlin famously quipped that she did not know whether Bourke was "a victim, or a crook, or a little bit of both."[21] In *Green*, the Judge limited the prison sentence for both Greens to only six months plus three years of supervised release, which likely was driven in significant part by the old age and poor health of Mr. Green. Moreover, as the government pointed out in Esquenazi's sentencing hearing, the corrupt schemes in *Bourke* and *Green* did not produce a tangible loss to the victim (in fact, Bourke lost his investment entirely); in contrast, the Haiti Teleco scheme produced a loss of at least $2.2 million to the government of Haiti.[22]

Take-Away Points

The very substantial prison terms imposed on Esquenazi and, to a lesser extent, Rodriguez serve as a reminder of the increasingly serious penalties for individuals found to have violated the FCPA. The severity of their sentences signals that judges under certain circumstances are willing to impose lengthy prison terms, even if they choose to depart downward from far more stringent federal Sentencing Guideline ranges. In light of the DOJ's often repeated commitment to continue its focus on individual prosecutions in order to achieve deterrent effects, further prosecutions and attendant significant prison sentences can be expected in the future.[23]

The question for defense counsel and their individual clients thus becomes how to respond to an indictment. Although the facts and circumstances vary in every case, one lesson from the available limited data set is that persuasive evidence showing the defendant to be a central actor in a bribery scheme harbors the serious potential to result in a conviction and tough prison sentence. Accordingly, it is not surprising that the majority of defendants in such situations have entered guilty pleas and agreed to cooperate with the government's investigation.

Cases with more ambiguous evidence and/or a defendant's more tangential role in the alleged bribery, however – such as in *Bourke* – will likely result in lower sentences even if the defendant is convicted at trial. In those instances, defendants may be willing to forego a plea and instead risk forcing the government to prove its case to the jury and to persuade the judge to impose a lengthy sentence.

Finally, a powerful determinant of the length of a sentence is the pre-existence of other individual prosecutions under the same operative facts, not least due to the "need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct."[24] As exemplified by the Haiti Teleco matter, prior sentences arising from the same bribery scheme are primary reference points for the judge and thus will strongly influence a convicted defendant's punishment.

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21 *United States v. Bourke*, No. 1:05-cr-00518-sas, Transcript of Sentencing Hearing (S.D.N.Y. Nov. 10, 2009), at 34, available at http://www.justice.gov/criminal/fraud/fcpa/cases/kozenyv/11-10-09bourke-trans-hearing.pdf.

22 *Esquenazi*, Transcript of Sentencing Hearing, at 59-60.

23 The statement by Assistant Attorney General Lanny Breuer on the occasion of Esquenazi's sentencing underscores the deterrence goals of the DOJ in pursuing individual defendants. "This sentence – the longest sentence ever imposed in an FCPA case – is a stark reminder to executives that bribing government officials to secure business advantages is a serious crime with serious consequences…As today's sentence shows, we will continue to hold accountable individuals and companies who engage in such corruption." DOJ Press Rel., note 1, *supra*.

24 18 U.S.C. § 3553(a)(6); *see generally United States v. Booker,* 543 U.S. 220, 125 S.Ct. 738 (2005).

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Transparency International's 2011 Bribe Payers Index

On November 2, 2011, Transparency International published the 2011 edition of its Bribe Payers Index ("TI BPI"), which "ranks 28 of the world's largest economies according to the perceived likelihood of companies from these countries to pay bribes abroad."[1] The 28 countries included in the TI BPI encompass all G20 countries and represent 78% of global foreign direct investment and exports.[2] The Index is based on the results of Transparency International's 2011 Bribe Payers Survey ("TI BPS"), which asked more than 3,000 business executives worldwide about their views on the extent to which companies from those countries engage in bribery when doing business abroad.[3]

The TI BPI is an index of the "perceptions" of the business executives who took part in the TI BPS, rather than a measure of actual levels of bribery, and it is therefore subject to the usual criticisms aimed at perception-based indices of corruption.[4] Nevertheless, the TI BPI represents a useful tool for allocating prosecutorial and regulatory resources. U.S. Department of Justice Assistant Attorney General Lanny A. Breuer's recent remarks, which linked the TI BPI to the global movement towards criminalization of foreign bribery, demonstrate that the Index is firmly on the U.S. Department of Justice's radar.[5] The TI BPI should also prove a helpful reference tool to companies designing anti-corruption programs, and to those engaged in due diligence of potential agents, other third parties, or future acquisitions.

Beyond this, the TI BPI highlights some of the structural weaknesses in the current international anti-bribery enforcement regime. Although the TI BPI does not distinguish between, on the one hand, companies subject to the FCPA, the U.K. Bribery Act ("UKBA"), or other more aggressively enforced cross-border anti-bribery regimes, such as Germany's Act on Combating Bribery of Foreign Public Officials in International Business Transactions ("ACB"), and those that are not, the data conveyed by the new TI BPI highlights recurring issues of inequality of treatment of companies subject to, and those that are not subject to, vigorous cross-border enforcement regimes. In so doing, the Index will provide further fodder for debates within the United States, the United Kingdom, Germany, and elsewhere, over how best to frame enforcement policies, and how those policies, whether set forth in the underlying international anti-bribery statutes or in guidance that governs prosecutorial discretion, should recognize that the market for corrupt transactions tends to be driven in significant measure by private firms that are not presently subject to vigorous prosecution in a cross-border legal regime.

The Statistics

The previous BPI was published in 2008, and perhaps the most striking result in the 2011 BPI is that perceptions of foreign bribery have "on average seen no improvement."[6] Companies within the studied countries are scored on a scale of 0 (companies from that country always bribe abroad) to 10 (companies from that country never bribe abroad). The average score across 22 countries from the 2008 BPI was 7.8 and the average score for those same countries in the 2011 BPI was 7.9.[7] Many countries received either exactly the same score as in 2008, or saw only a very small improvement or deterioration.

The top ten countries' companies in 2008 remained the same in 2011; the only exception being French companies' decline from 9th to 11th place. The most dramatic changes within the top ten were the fall of Canadian companies from 1st place in 2008 to 6th place in 2011, and the fall of U.K. companies from 5th place in 2008 to joint 8th place with Singaporean companies in 2011. The score of Canadian and U.K. companies decreased by 0.3, the largest decline in the 2011 BPI. The perception of U.S. companies fell one spot from 9th to 10th place, although their score

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1 *See* Transparency International, Bribery Payers Index 2011 at 2, http://bpi.transparency.org/results/, [herinafter "Bribe Payers Index"].

2 *Id.* at 4, 28.

3 *See* Transparency International, What is the Bribe Payer's Index?, http://bpi.transparency.org/in_detail/ (last visited Nov. 16, 2011).

4 *See* Christine Arndt and Charles Orman, "Uses and Abuses of Governance Indicators," OECD Development Centre (Aug. 2006) (noting general concerns arising from government indicators relating to transparency, economic growth, and other standards of measuring development), http://www.oecd.org/document/25/0,2340,en_2649_33935_37081881_1_1_1_1,00.html.

5 *See* Remarks of Lanny A. Breuer, Assistant Attorney General, Criminal Division, U.S. Department of Justice, 26th National Conference on the Foreign Corrupt Practices Act, Washington, D.C. (Nov. 8, 2011), http://www.justice.gov/criminal/pr/speeches/2011/crm-speech-111108.html, [hereinafter, "Breuer Remarks"].

6 Bribe Payers Index at 3.

7 *Id.* at 4.

TI Bribe Payers Index ■ Continued from page 6

of 8.1 remained constant. Companies headquartered in Japan and Germany, which jointly held 5th place in 2008, rose one spot to joint 4th place. While the companies of Italy and Spain remained outside of the top ten, the rankings of both countries' companies improved; those in Spain climbed one spot from 12th to joint 11th, placing them inside the top half of the Index this year, while those headquartered in Italy rose two places, from 17th to 15th.[8]

Russian companies remained in the bottom position, dropping from 22nd to 28th place due to the inclusion of companies of six additional countries in the 2011 BPI. Of the companies based in the other BRIC countries, those based in China remained second to last, dropping from 21st to 27th. Those based in Brazil rose from 17th to 14th place, overtaking those based in Hong Kong, South Africa and Taiwan and outranking the companies of each of the six newcomer groups to the Index. Companies based in India stayed in 19th place, this year tying with those in Taiwan and Turkey.[9]

Companies based in Mexico, the third largest trade partner of the United States overall and for U.S. imports,[10] retained their position of third from bottom, dropping from 20th to 26th place. However, while both the companies of India and Mexico ranked firmly in the bottom half of the table, they enjoyed the most dramatic improvements in terms of score, which increased by 0.7 and 0.4 respectively (the score of South Korea's companies also increased by 0.4 points). These improvements left a substantial gap between the companies of China and Russia, the only two company groups to score less than 7.0, and the rest of the field. The difference between the score of Chinese companies in 27th place and that of Mexican companies in 26th place was 0.5, over twice that found between all other consecutively placed countries, the only exception being the 0.4 margin between Chinese and Russian companies.

Although both Russia and China adopted legislation criminalizing bribery of foreign officials this year, it remains to be seen what impact this will have on the perceived frequency with which companies from both countries bribe abroad. Assistant Attorney General Breuer recently noted that such legislation is an important step, but that the "road ahead [remains] long" for both countries, and that "[t]he history of the FCPA illustrates why … it took decades for the Act to become as strong an enforcement tool as it is today."[11]

The six newcomer groups in 2011 all ranked in the bottom half of the TI BPI. Companies based in Malaysia fared the best of the newcomer group at 15th place, tied with companies based in Italy and South Africa. Companies based in Turkey placed 19th, tied with those in Taiwan and India. Companies based in Saudi Arabia, Argentina, the United Arab Emirates and Indonesia were ranked at 22nd to 25th, respectively (those based in Argentina and the UAE were tied at 23rd place), with only entities headquartered in Mexico, China and Russia receiving lower scores.[12]

It is clear that none of the companies included in the TI BPI are immune from the perception that they are likely to pay bribes when doing business abroad. The companies of the Netherlands and Switzerland, leading the 2011 BPI in joint 1st place, both achieved a less than perfect score of 8.8 (the same score achieved by 2008's frontrunner, Belgium). As the TI BPI notes, "[c]ompanies from these countries are seen as less likely to engage in bribery than [those based in] the other countries ranked, but there is still room for improvement."[13]

Business Sector Rankings

In addition to ranking the perceived propensity of companies based in particular countries to pay bribes abroad, the TI BPI also ranks business sectors. The TI BPS asked the same business executives to comment on the propensity of companies from 19 business sectors to engage in bribery abroad.[14] Again, none was perceived to be immune from bribery; the joint 1st place sectors, agriculture and light manufacturing, scored only 7.1 each. The public works contracts and construction sector ranked at the bottom, as it did in 2008, although the margin between it and the second to bottom sector (utilities) grew to almost 1.0. The oil and gas, real estate, property, legal and business services, and mining sectors rounded out the bottom quarter of the Index, in similar positions to those in 2008.

In the context of its assessment of business sectors, the 2011 TI BPI measured

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8 *Id.* at 5, 28.

9 *Id.*

10 *See* U.S. Census Bureau, "Top Trading Partners – Total Trade, Exports, Imports" (Sept. 2011), http://www.census.gov/foreign-trade/statistics/highlights/top/top1108yr.html.

11 *See* Breuer Remarks.

12 Bribe Payer's Index at 5.

13 *Id.* at 4.

14 *Id.* at 15.

TI Bribe Payers Index ■ Continued from page 7

for the first time the perceived propensity of companies to engage in commercial bribery as well as bribery of public officials, finding the former to be just as prevalent as the latter. The TI BPI noted in this regard that legal frameworks that fail to prohibit "private" bribery may be lacking.[15] While the prohibitions of the FCPA are limited to bribery of foreign officials, political parties and candidates for political office, other jurisdictions take a different approach. Notably, the UKBA defines bribery of a private counter-party representative as an offense.[16]

Conclusions

Although the focus of the TI BPI is on the private-sector supply side of corruption, there is a strong correlation between the results of the BPI and Transparency International's 2010 Corruption Perceptions Index, indicating that companies headquartered in a country that is perceived to be highly corrupt will be perceived as more likely to bribe abroad.[17] This correlation appears to be a long-term trend; it was identified also in 2008.[18]

In light of the 2011 TI BPI, companies should carefully review the jurisdictions in which their business partners, affiliates and agents are headquartered, particularly if those countries rank in the bottom three quarters of the index. Companies in these countries may well engage in foreign bribery as a way of life, and partnering with, investing in, or acquiring those companies through merger and acquisition activity is a substantial risk.

But perhaps the most important impact of the TI BPI may be in focusing a spotlight on what is the apparent equity – or inequity – of the current global enforcement regime. Under that regime, as it exists practically today, companies not effectively subject to the jurisdiction of the FCPA, the UKBA, the ACB, or other legislation that is not only strong on paper but backed by a vigorous enforcement program, have less legal risk and exposure, and substantially fewer incentives, to implement rigorous anti-bribery compliance programs, or, even, to adopt nominal policies abjuring bribery as a general way of doing business.

In this sense, the TI BPI's most important audience might not be private companies, but in the hallways of government. In the current budgetary, economic, and political environment, it is not likely that policymakers in the United States, the U.K., Germany, and other countries that have led the world in cross-border anti-bribery enforcement will seek to redress the global inequity in legal treatment by expanding the jurisdiction of their own nations' laws. Even if the notion of "universal jurisdiction" met relevant constitutional and international law standards, the out-of-pocket and diplomatic costs of doing so make such approaches almost certain non-starters. With that as the unstated reality, policy-makers in Western governments that have led the cross-border enforcement movement more likely will continue to focus on improving enforcement efforts within other countries – a point reinforced by Assistant Attorney General Breuer's recent remarks and by the OECD's and other regional organizations' continued work.

Until those efforts to strengthen the global enforcement regime more uniformly take a firmer hold, however, there will be continued pressure within the leading Western nations to "right size" their own enforcement practices. The U.K. government's guidance regarding the UKBA's defense of "adequate procedures" designed to prevent bribery in companies subject to the UKBA – not to mention the defense itself – is one such response. The ongoing debate over whether and how the FCPA should be amended better to achieve the United States's goals, or whether more detailed guidance from the U.S. Department of Justice and the SEC should issue, and what form it should take, must be seen in light of the TI BPI. From this perspective, the TI BPI may turn out to be one of the more important data sets driving policy in 2011 and beyond.

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15 *Id.* at 19.
16 U.K. Bribery Act 2010, c. 23, § 1.
17 Bribe Payers Index at 8.
18 *See* Transparency International, Bribe Payer's Index 2008, http://www.transparency.org/policy_research/surveys_indices/bpi/bpi_2008.

DOJ's and SEC's FCPA Enforcement Priorities

At the 26th National Conference on the FCPA organized by the American Conference Institute in November 2011, high-ranking representatives from the U.S. Department of Justice ("DOJ") and U.S. Securities and Exchange Commission ("SEC") offered their views on current enforcement practices and outlined future trends.

Although they acknowledged significant improvements in corporate compliance over the last several years, speakers from both agencies emphasized that vigorous enforcement of the FCPA would continue. Officials from the DOJ expressed strong opposition to any legislative efforts intended to weaken the statute or to make it a less effective tool in combating foreign corruption.

In his keynote address, Assistant Attorney General Lanny A. Breuer placed the pursuit by the U.S. government of foreign bribery in the context of an ever-increasing global effort to fight the scourge of corruption.[1] Breuer said that the DOJ's Criminal Division has developed a tripartite approach to fighting corruption in the U.S. and abroad that combines enforcement of the FCPA with (1) criminal prosecution under U.S. law of U.S. federal, state and municipal officials for their abuse of power; (2) assistance to foreign nations to build their law enforcement institutions; and (3) repatriating proceeds of foreign corruption through the use of civil forfeiture laws in the United States.

Department of Justice

A. 2012 FCPA Guidance

In a much-noted announcement, which comes in the wake of growing momentum within Congress to try to amend the FCPA, Assistant Attorney General Breuer announced that the DOJ intends to release in 2012 detailed new guidance on the FCPA's criminal and civil enforcement provisions. He did not offer details about the forthcoming guidance, but it is highly unlikely that the DOJ will substantively alter its positions regarding the proper interpretation and reach of specific provisions of the Act. Still, the possibility of meaningful guidance should be welcome news to those who have called for greater clarity regarding how the Department interprets particular critical provisions.

B. Enforcement Against Individuals

The DOJ justified its current focus on prosecuting individuals as necessary to deter corrupt practices. For that reason, FCPA prosecutions of individuals will remain a priority, notwithstanding the need to devote significant resources to that effort. Fraud Section Deputy Chief Charles E. Duross noted that his unit would seek to use more frequently the full panoply of law enforcement tools in its arsenal, including wiretaps and undercover investigations.

C. Enforcement Against Corporations

Although the number of resolved FCPA enforcement actions against corporations is on track to decrease in 2011 compared to the previous year, the DOJ does not view this statistic as indicating a general downward trend. According to Duross, his unit is extremely busy.

The DOJ highlighted the value of voluntary self-reporting as one of the factors that will favorably influence the nature of resolutions, consistent with the Department's principles of prosecuting business entities. Duross acknowledged frustration by the private sector about the uncertain value of voluntary self-reporting but pointed out that the DOJ needs to retain flexibility and thus cannot make categorical pronouncements on the impact of a company's determination to self-report.

DOJ Fraud Section Chief Denis J. McInerney defended the use of deferred prosecution agreements ("DPAs") as a useful tool for holding corporations accountable for misconduct while protecting third-party stakeholders. Moreover, the DOJ – like the SEC – noted that it will decline to prosecute under certain circumstances, particularly where corporate entities possess solid compliance programs and fully cooperate with the agency.

The DOJ officials also discussed the fact that the imposition of external compliance monitors on companies in voluntary FCPA resolutions has decreased, with only one monitor appointed in 2011. Whether an external compliance monitor is needed is a heavily fact-dependent calculation. Thus, according to the DOJ, the reduction of monitorships in the recent past should not be viewed as an indication of their general demise.

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1 DOJ Press Rel., Assistant Attorney General Lanny A. Breuer Speaks at the 26th National Conference on the Foreign Corrupt Practices Act (Nov. 8, 2011), http://www.justice.gov/criminal/pr/speeches/2011/crm-speech-111108.html.

FCPA Enforcement Priorities ■ Continued from page 9

Securities and Exchange Commission

A. Enforcement Trends

In the aftermath of the SEC's formation of its specialized FCPA Unit within the Division of Enforcement almost two years ago, the SEC officials stated their belief that the agency has sharpened and developed its expertise and fostered deeper relationships with the DOJ and regulators around the world. Kara Brockmeyer, the new Chief of the SEC's FCPA Unit, suggested that sector-wide investigations would increase and individual and agent liability would remain a priority.

Charles E. Cain, Assistant Director of the SEC's FCPA Unit, announced that the number of resolved enforcement actions to date in 2011 (11 matters against corporations and two matters against individuals resulting in monetary relief of more than $100 million) is lower than the 2010 number (23 actions against companies and seven actions against individuals with total monetary relief over $500 million). However, in light of the relatively small sample size, he discouraged reading too much into these statistics.

B. Expect Broader Use of Enforcement Tools

The SEC suggested that the Commission would seek to make greater use of its newly available tools for resolving corporate matters (including DPAs and non-prosecution agreements ("NPAs")) and to tailor remedies appropriately to the cases at hand. Moreover, the SEC representatives confirmed that the agency has refrained from bringing actions against companies on multiple occasions, in particular if the conduct at issue constituted an isolated incident perpetrated by a low-level employee or took place in an otherwise robust compliance environment.

Among the principal factors the SEC considers in fashioning an appropriate resolution to an enforcement action is the existence of a robust compliance program. According to the SEC, such a compliance program must take account of the company's substantive and geographic business environment and should include an appropriate tone from the top. The presence of an effective compliance office and regular exercises in testing and training, as well as evidence of appropriate discipline, are further important factors that heavily shape the SEC's view on how to resolve FCPA investigations.

Agency officials noted that the enforcement action against Tenaris, S.A. in May 2011 constituted the SEC's first (and thus far only) DPA. They implied that the DPA was intended to credit Tenaris for its immediate self-reporting following identification of misconduct and subsequent full cooperation with the SEC. The SEC's agreement to a three-year self-reporting period – as opposed to the placement at the company of an external monitor – in the Johnson & Johnson matter that concluded in April 2011 was cited by the agency's representatives as a recognition of that company's cooperative posture and thorough internal investigation.

C. Office of the Whistleblower

As a result of the enhanced whistleblower protection and bounty program provisions incorporated in the Dodd-Frank legislation, the SEC has staffed its Office of the Whistleblower with a full-time head, Sean McKessy, and five attorneys on one-year details from various SEC divisions. Ultimately, the office is intended to consist of eight attorneys. Notwithstanding its relatively small size and lack of permanent staff, SEC speakers emphasized the Commission's commitment to the function and noted that whistleblower tips have increased in volume and quality of information.

SEC officials observed that, based on their general impressions, the new whistleblower provisions have led companies to self-disclose potential misconduct more expeditiously than in the past. Accordingly, they stated, the increase in whistleblower tips and the impact of the Dodd-Frank bounty program has effectively shortened the window for companies to evaluate whether to self-disclose potentially wrongful conduct.

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Trends in Recent SFO Enforcement Activity

The four months since the U.K. Bribery Act became effective on July 1, 2011 have seen a flurry of activity at the U.K.'s Serious Fraud Office ("SFO"), demonstrating the agency's intention to step up dramatically its fight against foreign corruption. During this period, the SFO almost doubled the number of cases under investigation, from 26 cases in mid-July to roughly 50 cases in early October.[1] Though the SFO has not pursued any prosecutions under the Bribery Act to date, the agency has been active in pursuing cases under older statutes. Since July, the SFO has announced the U.K.'s largest civil settlement relating to foreign corruption, in an agreement with Macmillan Publishers,[2] and has commenced proceedings against three individuals relating to conduct in Southeast Asia and the Middle East. These prosecutions demonstrate the SFO's ability to leverage its limited resources with the assistance of authorities in other jurisdictions. Given the new tools available to it under the Bribery Act, the SFO's aggressive posture is likely to become more pronounced as activities occurring since July 1, 2011 become ripe for investigation and prosecution.

Recent SFO Activity

Since the announcement of the Macmillan Publishers settlement on July 22, the SFO issued press releases in connection with two further investigations relating to pre-Bribery Act foreign corruption.

Innospec: In late October, the SFO announced that it had charged two former CEOs and a former business unit director of Innospec Ltd. (the U.K. subsidiary of Innospec Inc., the U.S.-based and NASDAQ-listed chemicals company) in connection with alleged corrupt payments to public officials in Indonesia and (in the case of two of the accused) Iraq to secure contracts for the supply of tetra ethyl lead.[3] The alleged offences took place between 2002 and 2008.[4] These prosecutions of individuals followed the prosecution of the corporate entity, Innospec Ltd., by the SFO in February 2010, which resulted in the entry of a guilty plea and imposition of a $12.7 million financial penalty on the company in March 2010.[5] The corporate entity's guilty plea and financial penalty formed part of the SFO's first "global settlement" in cooperation with the U.S. Department of Justice ("DOJ"), U.S. Securities and Exchange Commission ("SEC") and U.S. Department of the Treasury's Office of Foreign Assets Control.[6] In its press releases, the SFO noted that its investigations into the three individuals had been assisted by the DOJ and SEC.[7]

Alcoa: Also, in late October, the SFO announced the arrest of Victor Dahdaleh, an international businessman and British and Canadian citizen. Dahdaleh allegedly paid bribes to officials of Aluminium Bahrain B.S.C. ("Alba") in order to obtain contracts for U. S. aluminium producer Alcoa Inc. for the supply of alumina from Australia and other goods and services.[8] The alleged offenses took place between 2001 and 2005.[9] Mr. Dahdaleh's arrest followed the DOJ's initiation of a criminal investigation in March 2008 after Alba filed a civil suit against Alcoa Inc. and

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1 *Compare* Financial Crime and Development: Oral Evidence Taken Before the House of Commons International Development Committee, Session 2010-12 (2011) (testimony of Richard Alderman, Director, SFO in response to question from Hugh Baley, Member, House of Commons International Development Committee), http://www.publications.parliament.uk/pa/cm201012/cmselect/cmintdev/uc847-i/uc84701.htm ("We have about 26 cases involving bribery. Clearly, at the moment all of those cases involve the pre-Bribery Act law.") *with* Richard Alderman, SFO Director, Speech at TRACE Forum 2011, Washington, D.C. (Oct. 4, 2011), http://www.sfo.gov.uk/about-us/our-views/director's-speeches/speeches-2011/trace-forum-2011,-washington-dc.aspx ("Currently, our anti-corruption workload is dominated by pre-Bribery Act cases. That is likely to remain for some time. We have about 50 corruption cases (whether involving the public sector or private sector) under formal investigation or prosecution and, of course, a number of additional ones that we are looking at to see whether we should open an investigation.") [hereinafter "Alderman TRACE Forum Speech"].

2 Karolos Seeger and Matthew H. Getz, "The U.K. Proceeds of Crime Act and the SFO's Latest Bribery-Related Settlement," *FCPA Update* Vol. 3, No. 1 at 5 (Aug. 2011), http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=9d56da80-1da1-4e29-bc27-4288643df3cc. The August 2011 issue of FCPA Update reported on the SFO's £11 million civil settlement relating to profits allegedly earned unlawfully at Macmillan's Education Division in East and West Africa. The settlement was agreed to under Part 5 of the Proceeds of Crime Act 2002 and was the outcome of an SFO investigation that was initiated following receipt of a report by the World Bank. *See* SFO Press Rel., Action on Macmillan Publishers Limited (July 22, 2011), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/action-on-macmillan-publishers-limited.aspx.

3 SFO Press Rel., Innospec Ltd: Former executive in court on fraud and corruption charges (Oct. 25, 2011), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/innospec-ltd--former-executive-in-court-on-fraud-and-corruption-charges.aspx [hereinafter "First SFO Innospec Press Release"]; SFO Press Rel., Innospec Ltd: Two more executives charged with corruption (Oct. 27, 2011), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/innospec-ltd-two-more-executives-charged-with-corruption.aspx [hereinafter "Second SFO Innospec Press Release"].

4 First SFO Innospec Press Release, note 3, *supra*; Second SFO Innospec Press Release, note 3, *supra*.

5 SFO Press Rel., Innospec Ltd charged over bribery and corruption (Feb. 25, 2010), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/innospec-ltd-charged-over-bribery-and-corruption.aspx; *Regina v. Innospec Ltd.,* Statement and Particulars of Offence (Southwark Crown Court), http://www.sfo.gov.uk/media/105631/innospec%20annex%204%20draft%20indictment.pdf; SFO Press Rel., Innospec Limited prosecuted for corruption by the SFO (Mar. 18, 2010), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/innospec-limited-prosecuted-for-corruption-by-the-sfo.aspx [hereinafter "Third SFO Innospec Press Release"].

6 Third SFO Innospec Press Release, note 5, *supra.*

7 First SFO Innospec Press Release, note 3, *supra*; Second SFO Innospec Press Release, note 3, *supra*.

8 SFO Press Rel., Victor Dahdaleh charged with bribery (Oct. 24, 2011), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/victor-dahdaleh-charged-with-bribery.aspx.

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others (including Dahdaleh) in the U.S. District Court for the Western District of Pennsylvania. The DOJ's investigation into Alcoa Inc. and various individuals for violations of the Foreign Corrupt Practices Act remains ongoing. In its press release, the SFO recognized that it had liaised with the DOJ and the Swiss authorities.[10]

Analysis

These recent reports of SFO prosecutions demonstrate that the agency is taking a tough enforcement stance with respect to allegations of pre-Bribery Act foreign corruption. Given that it has long been considered difficult to secure convictions under the patchwork of common law and statutory law offenses existing prior to the July 1 implementation of the Act, the SFO's perseverance in bringing pre-Bribery Act prosecutions is noteworthy and shows a willingness to crack down on instances of foreign corruption, irrespective of when the acts took place. In light of the SFO's willingness to enforce the pre-Act laws, as well as SFO Director Richard Alderman's recent indication that the agency's caseload remains "dominated by pre-Bribery Act cases,"[11] companies aware of corrupt payments pre-dating the Act must not be complacent with respect to past violations and must continue to take robust remedial action if and when allegations surface.

These cases further demonstrate the importance of cooperation with authorities in other jurisdictions to the success of SFO enforcement actions. In both of these recent cases, the SFO acknowledged its reliance upon such cooperation. The SFO enjoyed a similarly high level of cooperation in connection with its investigation into Securency International PTY Ltd., an Australian banknote printing firm. The SFO conducted a joint investigation with the Australian Federal Police, resulting in a coordinated search and arrest operation in the U.K., Spain and Australia.[12] The SFO's cooperative efforts are unsurprising given the agency's limited resources. The most recent SFO Annual Report shows that its budget for all its activities was cut by 34% from £51.5 million in 2008/09 to a planned £34.1 million in 2010/11.[13] Alderman has publicly acknowledged this, stating: "The budget has been cut quite considerably… We have had to be really astute as to how we use the money."[14] By comparison, the SEC's budget for 2010 was in excess of US$ 1 billion.[15] The total net budget submitted for Parliamentary approval for 2011/2012 was £35.9 million, despite the SFO's increased responsibility for investigating and prosecuting Bribery Act cases.[16] It is likely that the SFO will continue to pursue cases in the same pragmatic and opportunistic fashion in the future.

Insider reporting will probably be an important source of information on suspected fraud or corruption for the SFO. To encourage insiders to come forward, the SFO launched a new confidential reporting service, "SFO Confidential," on November 1. The new service enables whistleblowers to report confidentially via an online form or confidential hotline. The SFO encourages insiders to report "even the smallest piece of information" and assures them that their identities will be revealed only on a strictly need-to-know basis or if ordered by a judge.[18] Alderman stated, "I want people to come forward and tell us if they think there is a fraud or corruption going on in their workplace. Company executives, staff, professional advisors, business associates of various kinds or trade competitors can talk to us in confidence. I have set up a special team to make the SFO accessible to whistleblowers, with trained staff sympathetic in dealing

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9 *Id.*

10 *Id.*

11 Alderman TRACE Forum Speech, note 1, *supra*.

12 SFO Press Rel., Coordinated global searches in relation to Securency International PTY Ltd. (Oct. 6, 2011), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/coordinated-global-searches-in-relation-to-securency-international-pty-ltd.aspx; SFO Press Rel., Update in relation to Securency International PTY Ltd. (Oct. 15, 2011), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/update-in-relation-to-securency-international-pty-ltd.aspx.

13 SFO Annual Report 2009-2010 at 24 (2010), http://www.sfo.gov.uk/media/112684/sfo%20annual%20report%202009-2010.pdf.

14 Lawrence Fletcher, "Lack of cash may be hampering fraud agency," *Reuters* (Nov. 2, 2011), http://uk.reuters.com/article/2011/11/02/uk-sfo-cash-idUKLNE7A103M20111102.

15 U.S. Securities and Exchange Commission, "FY 2010 Congressional Justification" at 3 (May 2009) (showing the total 2010 funding request to be $1.026 billion), www.sec.gov/about/secfy10congbudgjust.pdf; "House Passes Bill Funding SEC At $1.03B; Slight Raise From WH Request," 41 SRLR 1387 (July 27, 2009) (reporting that the House approved a budget of $1.036 billion for the SEC, $10 million more than requested by the White House).

16 H.M. Treasury, "Central Government Supply Estimates 2011-12: Main Supply Estimates," at 298 (Apr. 26, 2011), http://www.official-documents.gov.uk/document/hc1012/hc09/0921/0921.pdf.

17 SFO Press Rel., Blow the Whistle! New route for insiders to unmask fraud and bribery (Nov. 1, 2011), http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/blow-the-whistle!-new-route-for-insiders-to-unmask-fraud-and-bribery-.aspx [hereinafter "SFO Confidential Press Release"].

18 SFO Website, "SFO Confidential – giving us information in confidence" (last visited Nov. 15, 2011), http://www.sfo.gov.uk/fraud/sfo-confidential---giving-us-information-in-confidence.aspx.

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with any anxieties people may have about coming forward. I want whistleblowers to feel comfortable about the new SFO Confidential to help flush out fraud."[19] The new service does not provide for whistleblower bounties, although there is speculation that that might change as part of a new European Commission Market Abuse regulation.[20]

In continuing to initiate prosecutions of pre-Bribery Act corruption, the SFO claims to be resisting the urge to prosecute easy cases under the new Act to boost conviction rates and make headlines. During a speech in London on November 4, Alderman emphasized that it is not the SFO's approach to go for "low hanging fruit."[21]

The Crown Prosecution Service secured the first conviction under the Bribery Act on October 14, when Munir Yakub Patel, a magistrates' court administrative officer, admitted to taking a £500 bribe to make a speeding charge disappear.[22] The case against Mr. Patel resulted in the imposition of a six-year sentence, including a three-year term under the Bribery Act to run concurrently with a six-year term for misconduct in public office.[23] Although the SFO has yet to announce an investigation into conduct governed by the new Act, it is anticipated that the agency will do so in the near future.[24] Alderman, in fact, already confirmed on November 4 that the SFO was engaging in enforcement activity in relation to suspected breaches of the new Act.[25] He stated, however, that "[i]t is not out there in the public domain because our approach is to corporations and the work we are doing with them at this stage must inevitably remain confidential."[26]

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19 SFO Confidential Press Release, note 17, *supra*.

20 European Commission, Proposal for a regulation of the European Parliament and of the Council on Insider Dealing and Market Manipulation (market abuse) at 13, § 3.4.5.2 and 21-22, ¶36 (Oct. 20, 2011) http://ec.europa.eu/internal_market/securities/docs/abuse/COM_2011_651_en.pdf.

21 Barry Vitou and Richard Kovalevsky, "SFO Director confirms SFO Bribery Act enforcement activity has already begun…," thebriberyact.com (Nov. 7, 2011), http://thebriberyact.com/2011/11/07/sfo-director-confirms-sfo-bribery-act-enforcement-activity-has-already-begun/ [hereinafter "Confirmation of UKBA Activity Post"].

22 Crown Prosecution Service Press Rel., Court officer admits taking bribe in first prosecution under Bribery Act (Oct. 14, 2011), http://www.cps.gov.uk/news/press_releases/127_11/.

23 Lindsay Fortado, London Court Clerk Sentenced to Six Years in Bribery Act Case, Bloomberg Businessweek (Nov. 18, 2011), http://www.businessweek.com/news/2011-11-18/london-court-clerk-sentenced-to-six-years-in-bribery-act-case.html

24 Confirmation of UKBA Activity Post, note 22, *supra.*

25 *Id.*

26 *Id.*

Upcoming Speaking Engagements

November 22, 2011 **Bruce E. Yannett, Dietmar Prager**
"Latest Developments of the FCPA, UK Bribery Act and the Whistleblower Provisions of the Dodd-Frank Act"
TozziniFreire Advogados and Debevoise & Plimpton LLP, São Paulo, Brazil

December 7, 2011 **Frederick T. Davis**
"Après le UK Bribery Act, lutter contre la corruption : un nouvel ordre réglementaire pour les entreprises"
France-Amériques Cercle des Nations Amériques, Paris
Conference brochure: http://www.debevoise.com/publications/BullCorruption07122011.pdf

January 24-25, 2012 **Bruce E. Yannett**
"The FCPA Year in Review: Enforcement Highlights and What the Latest Cases Reveal About Compliance Risk Exposure"
Sixth Houston FCPA Boot Camp, ACI, Houston
Conference brochure: http://www.americanconference.com/2012/855/6th-houston-fcpa-boot-camp/agenda