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NORTH AMERICA

THE UNITED STATES

Mondelez Settles FCPA Charges

On January 9, 2017, Mondelez-International, Inc. ("Mondelez") settled with the U.S. Securities and Exchange Commission ("SEC") to the tune of $13 million over allegations of illegal payments made by Mondelez's Cadbury unit in India in violation of the FCPA. *In the Matter of Cadbury Limited*, Adm. Proc. File No. 3-17759 (Jan. 6, 2017). Specifically, Mondelez consented to an entry of a cease-and-desist order from committing or causing any violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Mondelez agreed to pay a civil penalty of $13 million to the SEC.

In a January 2017 administrative order, the SEC found that Cadbury India had violated the internal controls and books-and-records provisions of the FCPA. In an effort to expand its production in India, Cadbury had sought assistance from an agent in securing the necessary licenses and approvals for a facilities expansion in Baddi, Himachal Pradesh, India. Cadbury India paid the agent's invoices, totaling

over $200,000, for the preparation of applications and files related to the licenses for the facilities expansion. However, records showed that in-house employees of Cadbury India performed these duties, not the agent, and bank records showed that the agent withdrew nearly all of its compensation as cash. According to the SEC, Cadbury India performed no due diligence on the agent and failed to maintain accurate records of services rendered.

The SEC stated that: "Cadbury India's books and records did not accurately and fairly reflect the nature of the services rendered by Agent No. 1. Cadbury did not implement adequate FCPA compliance controls at its Cadbury India subsidiary, which created the risk that funds paid to Agent No. 1 could be used for improper or unauthorized purposes."

Zimmer Biomet Holdings Inc. Settles "Repeated" FCPA Violations

Indiana-based medical device company Zimmer Biomet Holdings Inc. ("Zimmer Biomet") paid $30.5 million in mid-January to resolve U.S. Department of Justice ("DOJ") and SEC investigations into Zimmer Biomet's "repeated" FCPA violations.

Zimmer Biomet entered into a deferred prosecution agreement with the DOJ, pursuant to which it acknowledged responsibility for Biomet's violations of the internal controls provisions of the FCPA, as amended, 15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5), and 78ff(a). The direct parent company of Biomet Mexico will enter into a guilty plea for causing violations of the FCPA's books and records provisions, 15 U.S.C. §§ 78m(b)(2)(A). *U.S. v. Zimmer Biomet Holdings, Inc.*, Deferred Prosecution Agreement, Criminal No. 12-CR-00080 RBW (D.D.C. Filed Jan. 12, 2017). Moreover, pursuant to Section 21C of the Securities Exchange Act of 1934, Zimmer Biomet consented to the entry of the SEC's cease-and-desist order whereby Biomet must cease and desist from committing or causing any violations of Sections 13(b)(2)(A), 13(b)(2)(B) and 30A of the Exchange Act. *In the Matter of Biomet, Inc.*, Adm. Proc. File No. 3-17771 (Jan. 12, 2017).

Prior to its acquisition by Zimmer in 2015, Biomet faced FCPA charges from both the DOJ and SEC dating back to 2012. Biomet settled those actions pursuant to a deferred prosecution agreement, under which it paid nearly $23 million. Subsequently, in 2013, Biomet learned of additional potential FCPA violations in Brazil and Mexico, and notified its independent compliance monitor.

Under the most recent settlement, the combined Zimmer Biomet agreed to pay a $17.6 million criminal fine to the DOJ and retain an independent compliance monitor for three years. The company also agreed to pay the SEC a total of $13 million, consisting of $6.5 million in disgorgement and a $6.5 million penalty. According to the DOJ and SEC, Biomet willfully paid bribes to government officials through third-party distributors in Brazil and Mexico and failed to implement proper internal accounting controls. Specifically, Biomet reported: "(1) internal controls failures related to Mexico between 2010 and 2013, which resulted in Biomet's earning approximately $2,652,100 in profits; and (2) the continued use, between 2009 and 2013, by Biomet of a Brazilian distributor who had been engaged in the underlying criminal conduct that led to the 2012 DPA, which resulted in Biomet's earning approximately $3,168,000 in profits; Biomet executives were aware of the continued use of the prohibited distributor and red flags related to corruption in Mexico that Biomet did not address; Biomet executives ignored recommendations by Biomet's internal auditors and a company-wide requirement to cease all business with the Brazilian distributor."

Sociedad Química y Minera Pays Criminal Penalty

Sociedad Química y Minera de Chile SA ("SQM") agreed to pay more than $30 million to settle

FCPA charges alleging that it had bribed Chilean politicians to influence government policies and plans. Specifically, SQM paid a criminal penalty to the DOJ of almost $15.5 million and a civil penalty to the SEC of $15 million.

SQM consented to the entry of the SEC's cease-and-desist order whereby SQM must cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. *In the*

Matter of Sociedad Quimica y Minera de Chile, S.A., Adm. Proc. File No. 3-17774 (Jan. 13, 2017). SQM entered into a deferred prosecution agreement with the DOJ, charging the company with one count of failing to implement internal controls and records and one count of falsifying its books and records. *U.S. v. Sociedad Quimica y Minera de Chile, S.A.*, Deferred Prosecution Agreement, Case No. 1:17-cr-00013-TSC (Jan. 13, 2017).

Over the course of seven years, between 2008 and 2015, SQM spent nearly $15 million on outside vendors in the country, despite no evidence of receiving any goods or services. The outside vendors were individuals or organizations associated with Chilean officials. These payments were then logged in SQM's books and records as professional services. According to the SEC, "[m]ost of the payments were made based on fictitious documentation submitted to SQM by persons and entities associated with PEPs who posed as legitimate vendors to SQM ("third party vendors"). Those payments were not supported by documentation that those third party vendors provided services to SQM. Virtually all of the improper payments to [politically exposed persons] were directed and authorized by a senior SQM executive."

The DOJ and SEC stated that SQM knowingly failed to have in place proper internal controls to prevent the illegal payments. In a January 2017 administrative order, the SEC stated: "SQM violated the books and records provisions of the FCPA by failing to fairly and accurately reflect in its books, records and accounts that payments SQM ostensibly made to legitimate vendors were actually payments to [politically exposed persons]. SQM also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company was not making improper payments to [politically exposed persons]."

Orthofix Settles FCPA Charges

Texas-based medical device company Orthofix International ("Orthofix") self-reported to the DOJ and SEC improper payments in Brazil in March 2014. In January 2017, Orthofix settled the charges with the SEC for more than $6 million, $2.9 million in disgorgement and $2.9 million in penalties, and agreed to hire a compliance consultant for one year. Orthofix consented to the entry of the SEC's cease-and-desist order, whereby Orthofix must cease and desist from committing or causing any violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. *In the Matter of Orthofix International N.V.*, Adm. Proc. File No. 3-17800 (Jan. 18, 2017). The DOJ decided not to take any further action against the company.

At issue were certain payments and discounts that Orthofix Brazil used to induce doctors under government employment to use Orthofix products. The SEC stated that "[f]rom at least 2011 to 2013..., senior personnel at Orthofix Brazil employed at least four schemes, with third-party commercial representatives and distributors, to make improper payments to doctors employed at government-owned hospitals to induce them to use Orthofix's products, thereby increasing sales. The improper payments to doctors employed at government hospitals were improperly recorded as legitimate expenses and generated illicit profits to Orthofix of approximately $2,928,000."

The schemes the SEC referenced in its January 2017 administrative order included: (1) improper payments made to doctors through third-party

commercial representatives tasked with selling Orthofix's products directly to hospitals and doctors in Brazil; and (2) improper payments made to doctors through third-party distributors. These improper payments were often "openly discussed" in person with Orthofix Brazil employees.

Las Vegas Sands Corp. Fined

Las Vegas Sands Corp. ("LVSC"), a Nevada based casino and resort operator founded by billionaire Sheldon Adelson, agreed on January 19, 2017 to pay a criminal fine of $7 million for various FCPA offenses committed in China and Macau pursuant to a non-prosecution agreement with the DOJ. This settlement follows an April 2016 civil settlement with the SEC in which LVSC paid a $9 million penalty for a violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rule 13b2-1 thereunder. *In the Matter of Las Vegas Sands Corp.*, Adm. Proc. File No. 3-17204 (Apr. 7, 2016).

The January settlement with the DOJ took the form of a Non-Prosecution Agreement ("Agreement"). The DOJ found that, "[b]etween in or around 2006 and 2009, Sands, through its Macao-and PRC-based subsidiaries, transferred approximately $60 million to Consultant for the purpose of promoting Sands' business and brands. Several of Sands' contracts with and payments to Consultant had no discernible legitimate business purpose, Sands senior executives were repeatedly warned about the Consultant's dubious business practices and the high risk of Sands' transactions with Consultant, and by at least early 2008, certain senior Sands executives knew that over $700,000 paid to Consultant by Sands subsidiaries had simply disappeared." LVSC worked with the consultant to acquire a Chinese professional basketball team and two junior teams and to begin development of a resort facility with a Chinese state-owned travel agency.

The Agreement also discussed LVSC's significant remediation efforts. The company expanded "its compliance and audit functions and programs and [made] significant personnel changes, including the retention of new leaders of its legal, compliance, internal audit, and financial gatekeeper functions; established a new Board of Directors Compliance Committee, updated its Code of Business Conduct, the Anti-Corruption Policy, and relevant policy guidelines; and developed and implemented enhanced financial controls, screening of third parties and new hires, anti-corruption training, and electronic procurement and contract management system." These FCPA compliance efforts were among the factors the DOJ considered when granting LVSC a "discount of 25% off the bottom of the U.S. Sentencing Guidelines fine range."

Och-Ziff Capital Executives Charged

After settling one of the largest FCPA enforcement actions ever in September 2016 for $412 million, Och-Ziff Capital Management ("Och-Ziff") executives Michael L. Cohen ("Cohen") and Vanja Baros ("Baros") were charged with causing and arranging for Och-Ziff "to pay tens of millions of dollars in bribes to government officials on the continent of Africa through agents, intermediaries and business partners of Och-Ziff." *SEC v. Michael L. Cohen and Vanja Baros*, Civil Action No. 1:17-cv-00430 (E.D.N.Y. filed Jan. 26, 2017). Specifically, the SEC alleges that Cohen and Baros violated Sections 30A and 13(b)(5) of the Securities Exchange Act of 1934 and Rule 13b2-1, aided and abetted Och-Ziff's violations of Sections 30A and 13(b)(2)(A) of the Exchange Act, and aided and abetted or caused Och-Ziff management's violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940, and Rule 206(4)-8 thereunder, and that Cohen also violated Section 206(1) of the Advisers Act.

From 2007 to 2012, Cohen, a partner at Och-Ziff and London resident, was the head of Och-Ziff's European operations, and a member of Och-

Ziff's management committee. Cohen was responsible for overseeing transactions and investments in Europe, the Middle East, and Africa. Baros, an Australian resident residing in the U.K., was an analyst in the private investments group at Och-Ziff's European office, focusing on natural resources, mining, and minerals deals. From 2007 to 2013, Baros was a member of Och-Ziff's African Special Investment Team and had significant oversight responsibilities for natural resources investments in Africa.

According to the civil complaint filed by the SEC in January, "[b]eginning in 2007 and continuing through at least August 2012, Cohen and Baros executed a sprawling scheme involving serial corrupt transactions and bribes paid to high-ranking government officials in African countries, including the State of Libya, the Republics of Chad, Niger and Guinea, and the Democratic Republic of the Congo (the "DRC"). Cohen spearheaded and participated in all of the corrupt transactions. Baros began working with Cohen at Och-Ziff in 2007 and participated in multiple corrupt transactions that were part of the scheme. Cohen and Baros intended that the bribery scheme get Och-Ziff special access to investment opportunities in African countries; obtain or retain business for Och-Ziff, its subsidiaries and its business partners; and financially benefit Cohen and Baros, as well as the agents, intermediaries and business partners of Och-Ziff who participated with them in the corrupt transactions."

Aside from Cohen and Baros, numerous other individuals associated with Och-Ziff have been prosecuted for FCPA violations. Och-Ziff CEO Daniel Och agreed to pay almost $2.2 million to settle SEC charges that he caused FCPA violations. The son of Gabon's former prime minister, Samuel Mebiame, was also arrested and charged with conspiracy to bribe officials in at least three African countries in order to win mining rights for an Och-Ziff joint venture.

Magyar Executives Settle FCPA Charges

Two former executives of Hungarian telecom firm Magyar Telecom settled FCPA charges with the SEC shortly prior to the commencement of their trial. Former CEO, Elek Straub, and former Director of Central Strategic Organization, Andras Balogh, agreed to pay penalties of, respectively $250,000 and $150,000. Each former officer agreed to be barred from serving as an officer or director of a public company for a period of five years. Another former company official named in the complaint previously settled with the Commission. *SEC v. Straub*, Case No. 11 civ 9645 (S.D.N.Y. Filed Dec. 29, 2011).

The action derives from the 2011 settlements of the company and its majority owner, Deutsche Telekom AG, with the SEC and the DOJ. *SEC v. Magyar Telekom, Plc.*, Case No. 11 civ 9646 (S.D.N.Y. Filed Dec. 29, 2011). Those cases focused on potential legal changes in the telecommunications market in Macedonia beginning in early 2005. At that time the government was liberalizing the market in ways Magyar Telekom deemed detrimental to its subsidiary. To mitigate the impact of those changes the company entered into an arrangement under which government officials would delay the entrance into the market of a third mobile license. Other regulatory benefits would also be available. As part of the arrangement company officials paid $6 million under circumstances in which they knew, or were aware of, a high probability that circumstances existed in which all or part of the money would go to Macedonian officials. The payments were funneled through various mechanisms including intermediaries and a sham consultancy. The books and records of the company were falsified. Deutsche Telekom reported the results of Magyar's operations in its consolidated financial statements.

The SEC's complaint against Magyar and its parent alleged that the subsidiary violated Exchange Act Sections 30A and 13(b)(5) and that both companies violated Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B). To settle with the SEC, Magyar consented to the entry of a permanent injunction prohibiting future violations of the Sections cited in the complaint. The company also agreed to pay disgorgement and prejudgment interest in the amount of $31.2 million. The action against its parent was resolved in connection with the non-prosecution agreement Deutsche Telekom entered into with the DOJ described below.

With the DOJ, Magyar Telecom entered into a two year deferred prosecution agreement. The information charged the company with one count of violating the anti-bribery provisions of the FCPA and two counts of violating the books and records provisions of the FCPA. As part of the settlement, the company agreed to pay a $59.6 million criminal penalty. The company also agreed to implement an enhanced compliance program and submit annual reports on its efforts. At the time, Magyar's ADRs were traded on the New York Stock Exchange ("NYSE"). Deutsche Telekom, whose ADRs are also traded on the NYSE, entered into a two year non-prosecution agreement. The parent company agreed to pay a $4.36 million penalty in connection with inaccurate books and records and to enhance its compliance program.

Odebrecht Settles Corruption Charges

Braskem S.A., a Sao Paulo based producer of petrochemicals and thermoplastic product whose ADRs are traded on the NYSE, and its controlling shareholder, Odebrecht S.A., a privately held Brazilian international construction firm, resolved FCPA bribery charges with the SEC, the DOJ and Brazilian and Swiss authorities. Odebrecht and Braskem pleaded guilty to criminal charges and Braskem also entered into an FCPA consent decree with the SEC. According to the original DOJ release, the overall settlement involved the payment of at least $3.5 billion globally by the two firms, which would make it the largest-ever foreign bribery resolution. However, recent court filings indicate that the amount will be revised downward due to the firms' inability to pay.

The case centers on a scheme that traces to 2001 as to Odebrecht and 2006 as to Braskem. Over the period Odebrecht made over $788 million in illicit payments and Braskem executives directed the payment of over $250 million in bribes to Brazilian officials through Odebrecht and a labyrinth of offshore entities. Firm officials sought to secrete the payments by falsifying the books and records. *See, e.g., SEC v. Braskem, S.A.*, Civil Action No. 1:16-cv-02488 (D.C. Filed December 21, 2016).

Examples of the transactions involving Braskem drawn from the SEC's complaint include the following. First, Braskem funneled payments of about $4.3 million to officials of Petrolco Brasileiro S.A., the Brazilian energy giant based in Rio de Janerio, in connection with a joint venture with the firm. The joint venture agreement was entered into in 2005 to build a plant. Braskem executives were concerned that the agreement would be canceled because of public pressure.

Braskem executives met with a Petrobras official and a Brazilian congressman. Payments were made so influence would be used to preclude the cancellation of the agreement. The illicit payments were channeled through Odebrecht's off-book accounts. The effort was successful and Braskem saved about $8.4 million.

Second, Braskem paid about $20 million to Brazilian officials in connection with an agreement negotiated in 2008 with Petrobras for the sale and acquisition of naphtha, a derivate from crude oil Braskem used in it petrochemical production. In connection with the deal, firm

executives met with Brazilian officials. In return for the bribes, influence was exerted on the contract approval process, resulting in Braskem obtaining a pricing formula which reduced its costs. All, or at least part of the bribes, were paid through Odebrecht's off-book accounts.

Finally, Braskem made payments beginning in 2006 to Brazilian officials to secure favorable federal legislation. In return for the payments Brasken obtained tax and other benefits.

Throughout the period, Braskem's policies, procedures and controls failed to specifically address the FCPA. The firm's code of conduct failed to prohibit improper payments to foreign officials or political parties or even reference the FCPA. Its procurement and accounts payable processes during the period did not have adequate payment approval standards.

The SEC's complaint alleged violations of Exchange Act Sections 30A, 13(b)(2)(A) and 13(b)(2)(B). To resolve the action Braskem consented to the entry of an injunction prohibiting future violations of the Sections cited. The firm also agreed to pay disgorgement in the amount of $65 million to the SEC and retain an independent consultant. *See* Lit. Rel. No. 23705 (December 21, 2016).

To resolve charges with the DOJ, Odebrecht pleaded guilty to a one-count criminal information charging conspiracy to violate the anti-bribery provisions of the FCPA. The firm originally agreed to pay a fine of $2.6 billion but that amount is subject to further analysis since the company may not be able to pay that amount. The U.S. share of the penalty was originally slated at $260 million, but has since been reduced to $93 million due to the company's inability to pay. Braskem pleaded guilty to a one-count criminal information also charging conspiracy to violate the FCPA anti-bribery provisions. The firm has agreed to pay a total criminal penalty of $632 million, with $159.8 million going to the United States. The firm did not self-report but cooperated during the investigation yielding a reduction in the fine from the bottom of the range calculated under the sentencing guidelines.

Braskem also settled with the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland. Under the terms of those agreement the company will pay disgorgement of $325 million (including the amount paid to the SEC). The firm also agreed to pay 70% of the total criminal penalty to Brazilian authorities and 15% to Swiss.

Under the terms of the criminal plea agreements both firms will continue to cooperate with enforcement officials, adopt enhanced compliance procedures and retain independent compliance monitors for three years.

The scandal has also spurred corruption investigations throughout Latin America, as well as one investigation opened in Angola. Peru also issued an arrest warrant for former President Alejandro Toledo, accused of accepting a $20 million bribe, and a Colombian witness told prosecutors that President Alejandro Manuel Santo's campaign received nearly a $1 million contribution.

SEC's Chief of FCPA Unit Leaves

In April, the SEC announced that Kara Novaco Brockmeyer, head of the SEC's FCPA unit, would leave the agency. During Ms. Brockmeyer's tenure, the SEC brought 72 enforcement actions resulting in judgments and orders totaling more than $2 billion in disgorgement, prejudgment interest, and penalties.

Ms. Brockmeyer was credited with an expansion of the SEC's cooperation tools in the context of FCPA investigations, including the first FCPA-related non-prosecution agreement and the first use of a deferred prosecution agreement with an individual in an FCPA case. Ms. Brockmeyer also founded, and served as the co-head of, the

Enforcement Division's Cross Border Working Group, a proactive risk-based initiative focusing on U.S. companies with foreign operations, and served as a member of the Enforcement Division's Cooperation Committee and the Enforcement Advisory Committee.

Ms. Brockmeyer oversaw a number of significant FCPA-related cases, including a $412 million settlement with Och-Ziff Capital Management Group; Braskem's $957 million settlement for concealing millions in bribes paid to Brazilian government officials; JP Morgan Chase's $264 million settlement of charges that it influenced government officials in the Asia-Pacific region; and Embraer's $205 million settlement regarding FCPA violations in the Dominican Republic, Saudi Arabia, Mozambique, and India.

Sessions to Continue Strong FCPA Enforcement

Speaking at the Ethics and Compliance Initiative Annual Conference in April in Washington, D.C., U.S. Attorney General Jeff Sessions said the FCPA is "critical" to helping companies that want to do the right thing. Sessions said companies should succeed because "they provide superior products and services, not because they have paid off the right people." Sessions elaborated, stating that the DOJ "wants to create an even playing field for law-abiding companies. We will continue to strongly enforce the FCPA and other anti-corruption laws."

Sessions emphasized the importance of holding individuals accountable for corporate misconduct, saying "[i]t is not merely companies, but specific individuals, who break the law. We will work closely with our law enforcement partners, both here and abroad, to bring these persons to justice." Sessions also stated that "the Department of Justice has directed our prosecutors to consider these factors when making charging decisions. The U.S. Sentencing Guidelines also provide for substantial penalty reductions for companies that self-disclose, cooperate and accept responsibility for their misconduct. These principles will still guide our prosecutorial discretion determinations."

The announcement comes after questions over whether the new administration would continue FCPA enforcement. President Trump previously criticized the law. *See also* Remarks of Acting Principle Deputy Assistant AG Trevor McFadden (April 18, 2017) (noting the administration's commitment to enforcing the FCPA).

Anti- Corruption Bill Introduced in Senate

A bipartisan group of Senators introduced the Combating Global Corruption Act of 2017 on January 11, 2017. Essentially the bill would require the Secretary of State to compile list each year ranking countries by their application of the "minimum standards for the elimination of corruption."

CANADA

CEO Charged with Bribery

The Royal Canadian Mounted Police are prosecuting Larry Kushniruk, president of Canadian General Aircraft, for bribing Thailand military officials in connection with a deal involving aircraft from the Thailand national airline. The charges align with Canadian precedent interpreting the Corruption of Foreign Public Officials Act ("CFPOA") and finding that conspiracy to bribe without the actual transfer of money or other value is sufficient to support a foreign bribery offense.

EUROPE

THE UNITED KINGDOM

Investigation into Unaoil Bribery Continues

The Serious Fraud Office ("SFO") announced that it was investigating Swiss engineering and construction conglomerate ABB Ltd.'s United Kingdom subsidiaries for suspected bribery and corruption offenses on February 10, 2017. In a quarterly financial statement filed by the company on February 8, ABB said it had self-reported the results of an internal investigation related to dealings with Unaoil to the SFO, SEC, and DOJ. Less than two weeks after the investigation was disclosed, ABB announced that it had uncovered an embezzlement scheme at its South Korean subsidiary, ABB Korea. The treasurer of the subsidiary went missing on February 7, after which the company discovered "significant financial irregularities" which could end up costing the company $100 million.

In July of 2016, the SFO announced it had been conducting a criminal investigation of Monaco-based Unaoil since March 2016 when the Huffington Post and Fairfax Media Ltd. published an investigation alleging that Unaoil bribed foreign officials to secure contracts on behalf of large companies in the oil and gas sector, including Samsung, Rolls-Royce, Haliburton, Leighton Holdings, and Hyundai (ABB Ltd. was also mentioned in the report). Unaoil has denied the reports. The allegations are also being investigated by authorities in the United States and Australia.

On March 29, 2017, a court in London dismissed a lawsuit brought by Unaoil and its controlling family, the Ahsanis, to quash the fruits of a search conducted in Monaco at the request of the SFO. Authorities in Monaco conducted the search into the office and homes connected to Unaoil and its chairman, Ata Ahsani, and his sons Cyrus (former chief executive) and Saman (chief operating officer) on the basis of a letter of request ("LOR") sent by the SFO on March 23, 2016. The letter detailed the SFO's bribery and corruption investigation into the company and its executives. The LOR also noted that the SFO had intelligence suggesting that the key allegations would be published on an international news website in the coming days, which could prompt the suspects residing in Monaco to destroy relevant evidence. The claimants argued that the LOR was unlawful because it failed to disclose key information and was impermissibly wide (a "fishing expedition"). The court rejected both of these arguments, dismissing the claimants' challenges to the LOR and subsequent search.

This was not the first challenge brought by members of the Ahsani family to the SFO investigation. Last August, a judge dismissed Saman Ahsani's challenge to a notice compelling him to provide documents to the government agency. According to the FCPA Blog, members of the Ahsani family have raised seven separate grounds for judicial review of the SFO investigation since June 2016.

Barclays CEO under Investigation Relating to Whistleblower

The Financial Conduct Authority ("FCA") and the Prudential Regulation Authority ("PRA") are investigating Barclays CEO Jess Staley for his actions in trying to unearth the identity of the author of anonymous letters sent to the Barclays board and a senior executive in June 2016. The letter expressed concerns about the recruitment process and certain personal issues about a

senior employee who had been recruited by the bank earlier in the year.

Mr. Staley sent an email to the Barclays staff, explaining that he viewed the letter writing as an attempt to unfairly smear the senior executive and apologizing for getting too personally involved in the matter instead of letting the compliance function sort out the issue. In addition to the investigation by the two U.K. authorities, Mr. Staley could also see his discretionary compensation docked by as much as £1.3 million ($1.62 million).

The FCA published new rules on whistleblowing in October 2015, which went into force in September 2016. Some of the key rules include requiring firms to: put in place internal whistleblowing arrangements able to handle all types of disclosures, add text in settlement agreements to explain workers' right to whistleblower protections, and present a report on whistleblowing to the board at least annually.

SFO enters into DPA with Rolls-Royce

The SFO entered into a deferred prosecution agreement ("DPA") with Rolls-Royce PLC on January 17, 2017. The DPA marks the end of the SFO's largest investigation to date, spanning four years and costing £13 million ($16.4 million). The suspended indictment alleged 12 counts of conspiracy to corrupt, false accounting, and failure to prevent bribery over a period of three decades and involved seven jurisdictions. Rolls-Royce will pay £497.25 million ($625.5 million) plus interest and the SFO's cost of £13 million ($16.4 million) to settle the case in the U.K. Rolls-Royce also reached an agreement with the DOJ and Brazil's Ministério Público Federal who were also investigating the company's conduct, and will pay the U.S. $170 million and Brazil $25 million to settle those cases. In addition, Rolls-Royce spent £130 million ($163.6 million) on legal costs and implementing new compliance procedures.

In March, the U.K. Export Finance agency launched an inquiry into whether the company complied with the agency's anti-bribery rules when it received financial support from the credit agency to help them win contracts around the world. The anti-bribery rules require firms applying for financial backing to declare they have not used corrupt payments to win the export contracts and have not channeled payments through agents.

The SFO's bribery and corruption investigation is continuing as to the conduct of the individuals at Rolls-Royce with Sir John Rose, CEO of Rolls-Royce from 1996-2011, recently questioned under caution by the SFO. The SFO has not confirmed how many individuals it has interviewed relating to the conduct, but said it intends to announce whether it will bring charges against individuals within the next few months. Sir Brian Leveson, the senior judge who approved the DPA between the SFO and Rolls-Royce, praised the cooperation of the company's existing management with the investigation and said all of the key players involved in the scandal were no longer with the company. However, the senior judge did say that the company had been aware of potential corruption as far back as 2010 but had decided against notifying authorities.

This DPA is only the third of four such agreements entered into by the SFO since they were introduced in the U.K. in 2014. Three out of the four DPAs have been used in bribery and corruption cases. Ben Morgan, joint head of bribery and corruption at the SFO, recently gave a speech discussing the future use of DPAs in which he said that the disposal of corporate criminal risk through DPAs will become increasingly common. Mr. Morgan also said that discounts for penalties of up to 50% will be given to those who cooperate and that those who do not cooperate will receive the most punitive sanction available under the sentencing council guidelines if convicted. Self-reporting, according to Mr. Morgan, will be given a lot of weight when

deciding whether a DPA is an appropriate mechanism for settling a case.

Tesco and SFO enter into DPA

In March 2017, the SFO announced its fourth DPA which was used to resolve a two-year investigation into supermarket giant Tesco. The investigation centered on whether Tesco had misstated its profits between February and September 2014 by about £250 million ($314.6 million) caused by booking income from suppliers too early. Tesco will pay a £129 million ($162.4 million) fine to settle the case with the SFO and has also agreed with the FCA to pay £85 million ($107 million) to shareholders and bondholders who bought assets between August 29 and September 19, 2014. This is the first time the FCA has used its powers under section 384 of the Financial Services and Market Act to require a company to set up a scheme to compensate purchasers of shares and bonds. This is also the first DPA to cover both criminal and regulatory conduct.

The DPA only covers Tesco's UK subsidiary, leaving the liability of Tesco Plc and three former supermarket directors who have also been charged with fraud an open question. The three former directors have been charged with fraud by abuse of position and fraud by false accounting; all have pleaded not guilty. The details of the Tesco scandal will remain concealed until September, which is when the former directors' court case is slated to begin.

U.K.'s Anti-Corruption Improvements and Future

The OECD issued its Phase 4 report regarding the implementation of the OECD anti-bribery convention by the U.K. The report comes five years after the OECD published its Phase 3 report in March 2012 and found that the U.K. has taken significant steps since that time to make it one of the major enforcers among the Working Group countries, having fully implemented 18 of the OECD's 34 recommendations by 2014. Since the prior evaluation, the U.K. has wrapped up nine foreign bribery cases, which involved criminal liability for ten individuals and six companies, imposed civil remedies in three cases and administrative sanctions in another two. The report credited legislative reforms, such as the use of DPAs, and the U.K.'s continued commitment to fight corruption and bribery, as evidenced by the Anti-Corruption Summit held in May 2016 and the introduction of the Criminal Finances Bill in October 2016 which aims to improve the law enforcement framework to deal with money laundering and corruption.

However, the report also noted some current and future issues that could dampen the U.K.'s anti-bribery regime. The report points to Brexit, discrepancies between the Scottish system and the one in Wales and England, and persistent uncertainty about the SFO's continued existence, although the controversial agency just reached its 30th birthday. Prime Minister Theresa May, then acting as Home Secretary, has twice before attempted to get rid of the agency by incorporating it into the National Crime Agency (as well as the NCA's predecessor), and was defeated both times by the SFO's supporters. However, with May in the role of Prime Minister now and with the announcement at the end of last year of a recent audit of the SFO, some are fearful that May could finally prevail.

Senior Managers Certification Regime and Individual Accountability

Mark Steward, director of enforcement and oversight at the FCA, gave a speech discussing the use of the Senior Managers Certification Regime to expand individual liability. The regime, which commenced operation just over a year ago, was the result of recommendations by the U.K. Parliamentary Commission on Banking Standards, and provides a framework to identify

and allocate the responsibilities of senior managers in large corporations. The rules clarify, for both firms and regulators, which managers are responsible for what, allowing senior managers to be held responsible for misconduct within their sphere of responsibility.

The regime created a statutory duty of responsibility, which imposes an obligation on senior management to take reasonable steps to avoid the firm from not performing relevant requirements. The regime is different than the previous conduct rules in the FCA handbook, as they require firms to affirmatively map out the responsibilities of specific senior management positions.

Mr. Steward offered four practical observations about the new regime and how it would impose liability on individuals. First, he pointed out that the duty of responsibility did not create an independent basis of liability; individual liability is still dependent on the firm's wrongdoing, as the duty of responsibility is to act to ensure this wrongdoing doesn't take place. Second, a senior manager is not liable solely because of the firm. Rather, a senior manager is only liable if he has not taken reasonable steps to try and avoid the wrongful conduct. Third, a failure by management must be a factor in the corporate breach, even if it wasn't the sole cause of the breach. Finally, Mr. Steward noted that the duty applies to both actions and omissions.

The Senior Managers Certification Regime was also discussed in the FCA's recently published mission and business plan for 2017-2018. As part of its planned activities for this period, the FCA will consult on extending the Senior Managers Certification Regime to all authorized firms in 2017, and will implement the extended regime in 2018.

Heightened Financial Sanctions for Financial Sanction Breaches

Starting last month, the U.K. Treasury's Office of Financial Sanctions Implementation can dole out monetary penalties with a statutory maximum of £1 million ($1.3 million) or 50% of the value of the breach, whichever is higher. The new monetary penalty power was part of the Policing and Crime Act 2017. The decision to impose a fine is at the discretion of the Treasury, although it can be reviewed by a Minister of the Crown and appealed to the Upper Tribunal.

The Treasury currently has more than 27 financial sanctions in place, covering around 1,900 individuals, groups, and countries. In 2016, there were 95 breaches of financial sanctions, totaling around £75 million ($96.4 million).

Belgium

Belgium Adopts UBO Register

The Belgium government adopted a preliminary bill introducing an "ultimate beneficial owner" or "UBO" register in which beneficiaries of certain legal entities must be identified. Under the bill, any natural person who ultimately owns or controls—either directly or indirectly—a specified percentage of shares, voting rights, or ownership interest in any legal entity muster register. If the UBO cannot be identified, the entity's senior management will be considered defacto UBOs. Authorities from member states and Financial Intelligence Units will have unrestricted access to the register. Other constituents, including financial institutions and legal representatives, will have access pursuant to their respective due diligence programs. Other persons and organizations who can show a legitimate interest may also be granted access.

France

OECD Integrity Forum Held in Paris

The OECD Integrity Forum took place on March 30 and 31, 2017 in Paris, France. The Forum focused on ethics and compliance issues from a multidisciplinary perspective in an ongoing effort to tackle corruption. Government officials, business leaders, and civic representatives met to discuss topics including the cost of corruption to society and the role of export controls to counter bribery. Key takeaways included increased efforts to build compliance programs equipped to address concerns over corporate values and larger societal challenges; reexamining the roles of accountants and attorneys and the need to embrace legal standards beyond legal compliance; the increased need for stronger financial transparency and accountability mechanisms combined; and a desire for more innovative investigative efforts that will generate more usable data.

Germany

Germany Introduces "Competition Register"

On March 29, 2017 the German Federal Government introduced a draft bill for a law establishing what's been coined as a "competition register"—which will effectively become a blacklist for public contracting authorities. The law will require public contracting authorities, utilities, and grantors to consult the competition register before awarding public contracts, and will authorize these entities to exclude any company from an award due to criminal convictions or administrative offenses—including but not limited to corruption, bribery, or money laundering.

The law will require each respective public prosecution authority to populate the register with these prior offenses. Before being listed in the register, an entity will have the opportunity to be heard and object to its inclusion on the list. Listed companies will periodically be deleted from the register, either after a designated period of time has passed or the company proves it has paid compensation for any corresponding damages charged, has cooperated with authorities, and has implemented appropriate compliance measures.

Sweden

Chief Executive Investigated for Hunting Trip Bribes

Swedish prosecutors are investigating whether Par Boman received bribes relating to elk hunting trips he took when he was Handelsbanken's chief executive officer. The chairman maintains that his participation in these trips was completely open, consented to by company officials, and in accordance with all applicable laws.

Bombardier Executive Arrested

Swedish authorities arrested a Bombardier Transportation AB executive in furtherance of its ongoing investigation into corruption taking place in Azerbaijan. Bombardier is suspected of paying "millions of dollars in bribes to unidentified Azerbaijani officials through a shadowy company registered in the United Kingdom." Records purport to show that Bombardier sold equipment to Multiserv Overseas, which in turn sold the same equipment back to Bombardier's Azerbaijan affiliate for an inflated price—securing an $85.8 million profit for Multiserv. In connection with this deal, the Bombardier executive is suspected of aggravated bribery.

Switzerland

Executives Arrested in Connection with Swiss Bribery Probe

Company executives for Addax Petroleum were arrested on March 20, 2017 in connection with a bribery probe by Swiss prosecutors. Specifically, the prosecutors were looking for documents relating to more than $20 million in payments allegedly made to purported "legal advisers" in Nigeria and the U.S., plus another $80 million paid to an engineering firm for Nigerian construction projects. The investigation followed the resignation of Addax's auditor, Deloitte LLP, when it could not obtain satisfactory explanations about these payments. The executives were released weeks later upon the prosecutors' determination that there was no longer a risk of collusion.

Asia

China

Insurance Head Investigated for Corruption Violations

China's anti-corruption watchdog announced on April 9, 2017 an investigation into Xiang Junbo—the head of China's top insurance regulatory body, the China Insurance Regulatory Commission—for suspected corruption violations. This announcement comes at the heels of recent accusations that China's insurance industry is a haven for misconduct relating to risky acquisitions and, more generally, Chinese Premier Li Kequiang's pledge to increase efforts to deter financial corruption. Li charged authorities to improve supervision and maintain high pressure in their ongoing efforts to crack down on suspected corruption violations.

Hong Kong

Chief Executive Convicted for Failing to Disclose Conflict

A nine person jury convicted former Hong Kong Chief Executive Donald Tsang of one count of misconduct in office for failing to declare a conflict of interest in a real estate transaction. The prosecution was handled by Hong Kong's Independent Commission Against Corruption and resulted in a 20-month prison sentence for Mr. Tsang.

Indonesia

KPK Charges High-Ranking Officials in Large Scale Corruption Scandal

Indonesia's anti-graft agency "KPK" has charged two high-ranking government officials as part of its ongoing investigation into a large scale corruption scandal. KPK alleges that nearly forty people—including members of President Joko Widodo's ruling party, a minister, the speaker of parliament, and opposition party members—benefited from the theft of $170 million generated from a national electronic card. The investigation and corresponding legal proceedings remain ongoing.

Singapore

Former BP Exec Charged with Bribery

In a rare case in Singapore, Former BP Singapore executive Chang Peng Hong Clarence was charged on March 9, 2017 with 20 counts of bribery and 16 counts of transferring corrupt proceeds. The executive allegedly secured approximately $4.3 million in bribes from a local businessman, and then used that money to purchase properties in Singapore.

South Korea

Former South Korea President Charged with Bribery

Former South Korea President Park Geun-Hye was formally charged with bribery on Monday, April 17, 2017. The charge stems from allegations that Park offered favors to top businessmen, including Samsung heir Lee Jae-Yong who had previously been arrested and jailed on bribery charges. South Korean prosecutors also charged chairman of the Lotte Group, Shin Dong-Bin, with bribing Park and her accomplices. Specifically, Shin purportedly offered $6.15 million to a sports foundation in exchange for Park's assistance with Lotte's duty-free business.

Thailand

Former Governor and Daughter Convicted of Accepting Bribes

The ex-Tourism Authority of Thailand governor Juthamas Siriwan and her daughter were convicted for taking $1.8 million in bribes from Gerald and Patricia Green in exchange for awarding approximately $13.5 million in contracts to produce the Bangkok International Film Festival. The judge concluded that the Greens (found guilty of paying bribes to Siriwan by a U.S. court in 2009) won these contracts "despite lacking the necessary expertise, experience, or any related proven work record." Siriwan and her daughter were sentenced to 50 and 44 years in prison, respectfully.

Russia

Teva Settles Charges Alleging its Executives Ignored Bribery Red Flags

Teva Pharmaceutical Industries, Ltd., the world's largest generic drug manufacturer, agreed to pay the SEC and DOJ more than $519 million US to settle charges of paying bribes to government officials in Russia, Ukraine, and Mexico, designed to increase sales of its multiple sclerosis drug, Copaxone. The charges against Teva stemmed from senior executives authorizing illegal payments while knowingly or recklessly ignoring red flags indicating bribery and having inadequate internal accounting controls.

Australia

ASIC Charges Former Executive with Books and Record Violation

The ongoing Australian Securities and Investments Commission ("ASIC") and Australian Federal Police ("AFP") investigation into Leighton Holdings has seen two recent developments. On January 31, 2017 former executive Peter Gregg was charged with two counts of falsifying books and records in violation of Section 1307(1) of Australia's Cooperations Act 2001 (Cth). The charge relates to Mr. Gregg's alleged approval of a $15 million payment for steel that was never actually supplied.

On March 14, 2017 the ASIC committed Mr. Gregg and Russell Waugh—who also worked for Leighton Holdings—to stand trial in the NSW District Court. These are the first charges the ASIC or AFP have commenced in connection with the Leighton Holdings investigation.

AWB Chairman Found Liable of Bribery Charges in Connection with Cole Inquiry

The Supreme Court of Victoria found the former chairman of AWB Limited Trevor Flugge violated section s180(1) of the Corporations Act by breaching his duties as director in connection with payments he made to the Government of Iraq. The court found that Mr. Flugge failed to properly inquire about certain fees and, consequently, failed to prevent AWB from engaging in prohibited conduct. The court ordered Mr. Flugge to pay a $50,000 penalty and a 5-year disbarment from managing corporations.

This case is tied to the Royal Commission established by the Australian Government commonly known as the "Cole Inquiry." The Commission established the Cole Inquiry in 2005 to investigate certain conduct by various Australian companies relating to the supply of wheat to Iran (frequently referred to as the AWB oil-for-wheat scandal).

Australian Government Announces Bribery Reforms

The Australian Government recently announced several key bribery reforms, including a new corporate offense for foreign bribery and a deferred prosecution agreement ("DPA") arrangement designed to encourage more self-reporting. Under the new corporate offense, a corporate entity will be liable for all bribery "recklessly" committed by employees, contractors, and local agents unless it can prove it had a properly functioning system of internal controls in place designed to prevent bribery. The proposed DPA scheme will be similar to those already in place in the U.S. and U.K. and will credit cooperating companies who self-report. These agreements typically include provisions concerning ongoing cooperation, admitting to certain facts, payment of penalties, and various undertakings designed to ensure that improved compliance programs will be implemented.

Latin America

Peru

Peru to Complete its OECD Membership in 2017

Peru aims to complete its OECD membership accession in 2017. Included in this process is amending Peruvian anti-corruption legislation, including a focus on the following topics in an effort to fight endemic corruption: 1) civil death by corruption; 2) establishing a council of state to focus on corruption; 3) a new Presidential Integrity Commission; and 4) reviewing and reorganizing the executive branch of staff and advisers, with each cabinet minister responsible for the officials in his or her department.

Peru's Law 30424 recently introduced the concept of corporate administrative liability for companies who engage in transnational active bribery—bribing public officials or servants from other states or officials of international public organizations. This piece of anti-corruption legislation will come into force on January 1, 2018. Coupled with Legislative Decree 1352, both local and foreign companies can be prosecuted for corruption, either for transnational active bribery or active bribery of domestic public officials or servants. Entities found guilty of these offences will be confronted with a bevy of administrative penalties, but will be given mitigation credit for confessing before the internal investigation is formalized and collaborating with authorities to clarify the criminal act.

Africa

Nigeria

New Evidence Suggests that Shell Executive Knew of Nigerian Bribes

New evidence has emerged suggesting that top Shell executives knew that payments to the Nigerian government for the OPL 245 oil field would be passed to a convicted money-launderer to be used in securing political bribes. Specifically, recently uncovered emails indicate that Shell representatives were negotiating with Dan Etete, who has been convicted of money laundering in a separate case and stood to benefit from the OPL 245 deal. The alleged misconduct has sparked interest from various global regulators—including agencies from Italy and the Netherlands—although it remains to be seen whether formal criminal proceedings will commence.

DORSEY always ahead

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Dorsey Anti-Corruption Group

The Dorsey Anti-Corruption team's deep experience from government and private practice couples with a critical knowledge of key areas of the world such as:

- Africa
- Asia Pacific
- Europe
- Middle East
- Latin America

On anti-corruption issues, the Dorsey tools and Dorsey experience puts you ahead; the Dorsey team keeps you ahead.

Dorsey, Always Ahead

Anti- Corruption issues are also addressed on the Computer Fraud website and the SEC Actions blog.

This update is provided for general informational purposes and is not intended to constitute advice. If you require advice on any of the matters raised in this update, please let us know and we will be delighted to assist.