

**AN ANALYSIS OF ENFORCEMENT ACTIONS SETTLED
BY THE U.S. SECURITIES AND EXCHANGE
COMMISSION AND THE U.S. DEPARTMENT OF
JUSTICE FOR VIOLATIONS OF THE FOREIGN
CORRUPT PRACTICES ACT: 2006–2013**

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Abstract

Efficient capital markets and public confidence require honest actors. This is even more important in today's global marketplace. Unfair business practices such as bribery of foreign officials and maintaining and reporting of inaccurate books and records create an unlevel playing field for honest businesses, reduce market efficiency, undermine public confidence, and leads to increased regulation. Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977 in response to such unfair practices. The purpose of this study adds to the literature on unfair business practices by analyzing 98 FCPA enforcement actions settled by the U.S. Securities and Exchange Commission (SEC) and parallel enforcement actions settled by the U.S. Department of Justice (DOJ) during 2006–2013. Total judgments settled by the SEC and the DOJ during

2006–2013 were \$1.882 billion and \$2.475 billion, respectively.

I. INTRODUCTION

The U.S. Securities and Exchange Commission (SEC or Commission) was established in 1934 to enforce securities laws. Its mandate is to protect investors and maintain fair and efficient capital markets. Efficient capital markets and public confidence require honest actors. Unfair business practices such as bribery of foreign officials and failure to maintain and report accurate books and records create an unlevel playing field for honest businesses, reduce market efficiency, undermine public confidence, and may lead to increased regulation. Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977 in response to such unfair trading practices (USDOJ and USSEC 2012).

The FCPA prohibits the payment of bribes to foreign officials to assist in obtaining or retaining business. It also "requires issuers to maintain accurate books and records and have a system of internal controls sufficient to, among other things, provide reasonable assurances that transactions are executed and assets are accessed and accounted for in accordance with management's authorization" (USSEC 2014c, p. 1). The Act can apply to prohibited conduct anywhere in the world and extends to publicly-traded companies and their officers, directors, employees, stockholders, and agents, including third-party agents, consultants, distributors, joint-venture partners, and others.

The SEC and the DOJ are jointly responsible for enforcing the FCPA (USSEC 2014a). The U.S. Department of Justice (DOJ) is responsible for criminal enforcement, while the SEC is responsible for civil enforcement of the FCPA. The SEC's Division of Enforcement has responsibility for investigating and prosecuting FCPA violations. In 2010, SEC's Enforcement Division created a specialized FCPA unit, with attorneys in Washington, D.C. and in regional offices around the country, to

focus specifically on FCPA enforcement. The unit investigates potential FCPA violations; facilitates coordination with DOJ's FCPA program and with other federal and international law enforcement partners; uses its expert knowledge of the law to promote consistent enforcement of the FCPA; analyzes tips, complaints, and referrals regarding allegations of foreign bribery; and conducts public outreach to raise awareness of anti-corruption efforts and good corporate governance programs (USDOJ and USSEC 2012).

History of the FCPA

Congress enacted the FCPA in 1977 after the Watergate scandal. The SEC discovered that more than 400 U.S. companies had paid bribes to foreign government officials to secure business overseas. In short, the SEC reported that companies were using secret "slush funds" to make illegal campaign contributions in the United States and corrupt payments to foreign officials abroad. Furthermore, these companies were falsifying their corporate financial records to conceal the payments. Congress viewed passage of the FCPA as critical to stopping bribery. "By enacting a strong foreign bribery statute, Congress sought to minimize these destructive effects and help companies resist corrupt demands, while addressing the destructive foreign policy ramifications of transnational bribery. The Act also prohibited off-the-books accounting through provisions designed to strengthen the accuracy of the corporate books and records and the reliability of the audit process which constitute the foundations of our system of corporate disclosure" (USDOJ and USSEC 2012, p. 3).

In 1988, Congress amended the FCPA to add two affirmative defenses: (1) the local law defense; and (2) the reasonable and bona fide promotional expense defense. Congress also requested that President Carter negotiate an international treaty with members of the Organisation for Economic Co-operation and Development (OECD) to prohibit international

bribery by U.S. major trading partners. Subsequent negotiations at the OECD culminated, among other things, required parties to make it a crime to bribe foreign officials (USDOJ and USSEC 2012). "In 1998, the FCPA was amended to conform to the requirements of the Anti-Bribery Convention. These amendments expanded the FCPA's scope to" (USDOJ and USSEC 2012, p. 4):

1. include payments made to secure "any improper advantage";
2. reach certain foreign persons who commit an act in furtherance of a foreign bribe while in the United States;
3. cover public international organizations in the definition of "foreign official";
4. add an alternative basis for jurisdiction based on nationality; and
5. Apply criminal penalties to foreign nationals employed by or acting as agents of U.S. companies. The Anti-Bribery Convention came into force on February 15, 1999, with the United States as a founding party.

Unfair business practices undermine important social goals (USSEC 2014g). FCPA violations negatively impact organizations and their stockholders, diminish market efficiency, and reduce public confidence. The purpose of this study adds to the literature on unfair business practices by analyzing FCPA enforcement actions settled by the SEC and parallel enforcement actions settled by the DOJ during 2006–2013. To that end, the remainder of this paper is organized as follows: Section II provides a literature review of the FCPA; Section III provides a review of the SEC's

Division of Enforcement, while Section IV provides a review of the DOJ; Section V summarizes the penalties for FCPA violations; Section VI provides an analysis of 98 FCPA enforcement actions settled by the SEC and parallel enforcement actions settled by the DOJ during 2006–2013 and seven events that illustrate FCPA-related actions that occurred during the eight-year period; and Section VII provides some concluding commentary about the 2006–2013 results.

II. LITERATURE REVIEW OF THE FCPA

The majority of published work relating to the FCPA is commentary dedicated to legal arguments and theories of the FCPA by both advocates and foes of the statute. In short, the "legal literature contains more published research on the FCPA than the business literature" (Barker, Pacini, and Sinason 2009, p. 46). While a comprehensive review of these legal commentaries is beyond the purpose and scope of this research, a few publications are worth discussing. For example, Krever (2007) argues that the statute has had only limited success in curbing foreign bribery, while Georgis (2012) maintains that the law has had detrimental effects on economic and political stability. Georgis (2012) argues that alternative dispute resolutions [Deferred Prosecution Agreements (DPA) and Non-Prosecution Agreements (NPA)] have "created a system that encourages prosecutorial abuse and deters corporate behavior originally intended by Congress in 1977 to be permissible" (p. 268). Shingler (2013) further contends that due process may be severely impaired because companies charged with FCPA violations are likely to agree to the SEC and DOJ judgments because of the use of DPA and NPA agreements in order to bypass costly litigation.

Smith (2014) explores the recent trends in international anti-bribery legislation. She offers commentary regarding the vagueness of the legal term "corrupt intent" and provides a compelling argument regarding the liability of the FCPA statute

and the DOJ's aggressive enforcement actions [Lindsey Manufacturing and the 'African Sting Case' including Richard Bistrong, former vice president for Armor Holdings, Inc. along with 21 other defendants). She contends that the term 'corrupt' is ambiguous and that the text of the FCPA statute does not adequately define the term, albeit the government must prove 'corrupt intent' to impose liability under the FCPA. Smith (2014) points out "that almost every corporate FCPA action stems from voluntary disclosures. Moreover, almost all corporate actions are settled before trial, making litigation regarding corporate liability relatively non-existent. In fact, many critics suggest that the prevalence of settlements effectively relieves the government from proving an actual FCPA case" (p. 1810). Smith (2014) argues that because of "the FCPA's current ambiguous construction and its regulators' uncertain enforcement practices, foreign bribery remains profitable for companies" (p. 1832). She further contends that Congress "should remove the requirement of "corrupt intent" and impose strict corporate liability. This change would not only eliminate the ambiguity of "corrupt intent," but also increase the government's ability to enforce the statute and adequately fight foreign bribery" (p. 1832).

Ladd (2014) reviews the increasing use of DPA and NPA agreements by the DOJ to settle alleged FCPA violations. In such agreements, cooperation is required for a corporation to reduce its FCPA liability. Cooperation most often requires implication of culpable individuals (such as employees and agents). However, this may increase the corporation's other liability. For example, an individual whom the corporation implicated in the FCPA violation may bring a civil suit for defamation against the corporation. In other words, the corporation may be able to protect itself from higher criminal fines by full cooperation with the DOJ, but expose itself to additional liability for defamation. Ladd (2014) asserts that increased enforcement and focus on holding both corporations and individuals responsible for FCPA violations will continue. She argues that while cooperation between the parties is the best

alternative for resolving a FCPA criminal investigation, "an absolute privilege should attach to communications made to the DOJ during all stages of an FCPA investigation" (p. 979). If statements made to the DOJ were privileged, a corporation could free itself of potential defamation liability.

Demas (2014) provides commentary on FCPA ambiguities relating to charitable contributions and donations as conduits for corruption, while Au (2014) discusses U.S. companies that conduct business in China and several high-profile incidents where Chinese products may affect public health and safety. Given a public-safety rationale, Au (2014) calls for expansion of foreign bribery to all recipients. He asserts that "the public-safety rationale provides a reconceived legislative intent that will be necessary to implement these reforms through an amendment to the FCPA" (p. 952).

Chaffee (2014) provides commentary on the FCPA and corruption in international trade. He suggests that the World Trade Organization should play a more robust role in fighting corruption. Chaffee (2014) contends that while the SEC should continue to enforce the accurate books and records and adequate internal accounting controls provisions of the FCPA, he argues that the enforcement of the anti-bribery provisions of the statute should be consolidated in the DOJ, given that the DOJ and the SEC have different mandates.

The academic literature contains only a modicum of published research on the FCPA, but the available studies merit discussion. For example, Norton (2006) provides commentary on the perils of conducting business in China and competing with foreign competitors trading with China that are not subject to the FCPA. A large part of the Chinese economy remains in the hands of state-owned business, thereby increasing the risks associated with FCPA compliance. The author provides commentary on the impact of the FCPA on U.S. businesses and ways to mitigate FCPA risks in China.

Jourdan, Hesler, and Calapa (2008) argue that an organization's treasury function drive compliance effectiveness for

anti-money laundering policies and compliance with the FCPA. The researchers provide an integrated approach for managing compliance obligations such as anti-money laundering laws and the FCPA. They present a detailed principles-based framework for integrating governance, risk, and compliance activities across the company.

Boedecker (2011) discusses the key provisions of the FCPA that heighten risks associated with the use of gifts, travel, and entertainment to secure contracts with foreign companies. He provides a summary of the fines and prison guidelines and offers steps that U.S. companies seeking to do business abroad should take in order to mitigate the legal exposure associated with the FCPA.

Sanyal (2012) examined DOJ prosecutions of FCPA violations and shows that officials in less developed countries are the likely recipients of bribes and that bribery occurs more often in the capital-intensive industries of energy, construction, telecommunications, and military equipment. He further shows that firms more often use intermediaries and agents to consummate illicit transactions rather than directly paying the intended beneficiaries and that the primary motivation for bribery is to secure a particular contact. Sanyal (2012) offers a set of managerial actions or 'best practices' that can be used to reduce corporate liability and improve governance practices.

Zeske and Akers (2012) examine FCPA cases filed by the DOJ from 1998 through 2010. The authors provide an analysis of these cases including some summary statistics that may be useful for the auditors of international clients and the boards of directors of these companies. The researchers offer guidance on mitigating the risks associated with the FCPA and the sanctions imposed for violations.

Congress tasked the SEC's civil authority to enforce the anti-bribery provision of the FCPA statute. Black (2012) argues that this task does not fit the SEC's mission. She asserts that combating global corruption is not part of the SEC's central

mission (to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation). Black (2012) contends that enforcement of the anti-bribery provisions of the FCPA should be consolidated in DOJ, leaving the enforcement of the accounting and internal control provisions of the FCPA with the SEC.

Karpoff, Lee, and Martin (2013, *unpublished paper*) developed a model to analyze the costs of international bribery using data from FCPA enforcement actions from 1978 through May 2013. The researchers argue that their model demonstrates that the profitability of bribing foreign officials still outweighs the risks of the possible disgorgement of profits, fines, and penalties should a FCPA violation be discovered. They further contend that should penalties remain at historical levels, the probability of getting caught would have to increase substantially to deter such infractions, and while they do not address the debate over whether the FCPA is good public policy, they maintain that "bribery will continue to be profitable, at least on an ex ante basis, unless there is a substantial increase in the penalties for bribery or the probability of getting caught, or both" (p. 5).

Lippitt (2013) analyzes the relationship between incidence of prosecuted FCPA violations, the growth of perceived corruption in a given country, as measured by the Corruption Perceptions Index (CPI), and U.S. investment growth in a given country. Using multiple linear regression analysis, the author tests 119 countries associated with 324 incidents of bribery prosecuted under the FCPA. The results show that the incidence of FCPA violations is negatively correlated with a country's corruption score (higher violations = lower CPI score). Note that while a lower CPI score indicates that a country is more corrupt and a higher CPI score indicates that a country is less corrupt, the CPI scale was reversed before the regression analysis was performed to make the results easier to read. Growth in U.S. investments was not found to be significantly correlated with the incidence of FCPA violations. Lippitt (2013) argues that the results of the study are consistent with the idea that the FCPA has been effective in fighting

corruption and do not support the hypothesis that it has harmed U.S. business abroad.

Priovolos (2014) examines the marketing implications associated with the healthcare industry and the increased exposure of corrupt practices in emerging markets. He provides a brief overview of the FCPA and offers specific recommendations regarding marketing strategies and tactics that may help mitigate FCPA-related risks in the healthcare industry.

III. U.S. SECURITIES AND EXCHANGE COMMISSION— DIVISION OF ENFORCEMENT

As previously noted, the SEC, through its Division of Enforcement, and the DOJ are jointly responsible for enforcing the FCPA. The Division of Enforcement was created in August 1972 to consolidate enforcement activities that previously had been handled by the various operating divisions at the SEC.¹ The Division investigates and brings civil charges in federal district court or in administrative proceedings based on violations of the federal securities laws. Successful enforcement actions result in sanctions that deter wrongdoing, protect investors, and result in penalties and the disgorgement of ill-gotten gains that can be returned to harmed investors (USSEC 2014e).

"The Commission can bring a variety of administrative proceedings, which are heard by administrative law judges and the Commission itself. One type of proceeding, for a cease and desist order, may be instituted against any person who violates the federal securities laws. The Commission may also order the respondent to disgorge ill-gotten funds in these proceedings. With respect to regulated entities (e.g., brokers, dealers and investment advisers)

¹ In February 2009, Robert Khuzami was named Director of Enforcement at the SEC (USSEC 2009m). By August 2009, Mr. Khuzami, announced that the SEC would create five specialized units dedicated to highly specialized and complex areas of enforcement, one of which was the FCPA specialized unit (USSEC 2009n). In January 2013, the SEC announced that Mr. Khuzami will leave the agency after nearly four years of leadership (USSEC 2013k).

and their employees, the Commission may institute administrative proceedings to revoke or suspend registration, or to impose bars or suspensions from employment. In proceedings against regulated persons, the Commission is authorized to order the payment of civil penalties as well as disgorgement" (USSEC 2014e, p. 1).

IV. U.S. DEPARTMENT OF JUSTICE

"DOJ has criminal FCPA enforcement authority over public companies and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf. DOJ also has both criminal and civil enforcement responsibility for the FCPA's anti-bribery provisions over "domestic concerns"—which include (a) U.S. citizens, nationals, and residents and (b) U.S. businesses and their officers, directors, employees, agents, or stockholders acting on the domestic concern's behalf—and certain foreign persons and businesses that act in furtherance of an FCPA violation while in the territory of the United States. Within DOJ, the Fraud Section of the Criminal Division has primary responsibility for all FCPA matters" (USDOJ and USSEC 2012, p. 4).

The DOJ's FCPA Unit regularly works with the International Corruption Unit (ICU) of the Federal Bureau of Investigation (FBI) to investigate potential FCPA violations. The ICU has primary responsibility for international corruption and fraud investigations and coordinates the FBI's national FCPA enforcement program. In addition, the Department of Homeland Security and the Internal Revenue Service-Criminal Investigation regularly investigate potential FCPA violations. A number of other agencies are also involved in the fight against international corruption, including the Department of Treasury's Office of Foreign Assets Control, which has helped lead a number of FCPA investigations (USDOJ and USSEC 2012).

V. PENALTIES FOR FCPA VIOLATIONS

"The FCPA provides for different criminal and civil penalties for companies and individuals" (USDOJ and USSEC 2012, p. 68). Criminal penalties are discussed first. Civil penalties are summarized next, followed by a summary of the criteria for the waiver or reduction of SEC enforcement actions against companies and individuals.

Criminal Penalties

"For each violation of the anti-bribery provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to \$2 million. Individuals, including officers, directors, stockholders, and agents of companies, are subject to a fine of up to \$250,000 and imprisonment for up to five years. For each violation of the accounting provisions, the FCPA provides that corporations and other business entities are subject to a fine of up to \$25 million. Individuals are subject to a fine of up to \$5 million and imprisonment for up to 20 years" (USSEC 2012, p. 68). Under the Alternative Fines Act, "courts may impose significantly higher fines than those provided by the FCPA—up to twice the benefit that the defendant obtained by making the corrupt payment, as long as the facts supporting the increased fines are included in the indictment and either proved to the jury beyond a reasonable doubt or admitted in a guilty plea proceeding. Fines imposed on individuals may not be paid by their employer or principal" (USDOJ and USSEC 2012, p. 68).

U.S. Sentencing Guidelines. The DOJ uses the *U.S. Sentencing Guidelines* to calculate penalties for all of its resolutions, including guilty pleas, DPAs, and NPAs. The guidelines provide a detailed structure for calculating penalties for all federal crimes, including FCPA violations. "To determine the appropriate penalty, the "offense level" is first calculated by examining both the severity of the crime and facts specific to the

crime, with appropriate reductions for cooperation and acceptance of responsibility, and, for business entities, additional factors such as voluntary disclosure, cooperation, preexisting compliance programs, and remediation" (USSEC and USDOJ 2012, p. 68). Different penalties are provided for the different provisions of the FCPA. The initial offense level for the anti-bribery violations is determined under §2C1.1, while violations of the accounting provisions are assessed under §2B1.1. For individuals, the initial offense level is modified by factors outlined in the sentencing guidelines to identify a final offense level (USDOJ and USSEC 2012). This final offense level is used to determine whether "incarceration is appropriate, the length of any term of incarceration, and the appropriate amount of any fine" (USDOJ and USSEC 2012, p. 69). For corporations, the offense level is modified by factors particular to the given company when determining the applicable penalty (USDOJ and USSEC 2012).

Civil Penalties

"Although only DOJ has the authority to pursue criminal actions, both the DOJ and the SEC have civil enforcement authority under the FCPA. The DOJ may pursue civil actions for anti-bribery violations by domestic concerns (and their officers, directors, employees, agents, or stockholders) and foreign nationals and companies for violations while in the United States, while the SEC may pursue civil actions against issuers and their officers, directors, employees, agents, or stockholders for violations of the anti-bribery and the accounting provisions. For violations of the anti-bribery provisions, corporations and other business entities are subject to a civil penalty of up to \$16,000 per violation. Individuals are similarly subject to a civil penalty of up to \$16,000 per violation, which may not be paid by their employer or principal. For violations of the accounting provisions, the SEC may obtain a civil penalty not to exceed the greater of (a) the gross amount of the pecuniary gain to the defendant as a result of the violations or

(b) a specified dollar limitation. The specified dollar limitations are based on the egregiousness of the violation, ranging from \$7,500 to \$150,000 for an individual and \$75,000 to \$725,000 for a company. The SEC may obtain civil penalties both in actions filed in federal court and in administrative proceedings" (USDOJ and USSEC 2012, p. 69).

Disgorgements and Prejudgment Interest Charges

Disgorgements. "Disgorgements and penalties can be ordered in either administrative proceedings or civil actions, and the cases can be settled or litigated. Disgorgements represent repayment of ill-gotten gains (or losses avoided) resulting from individuals or entities violating the federal securities laws. The SEC seeks disgorgements to ensure that securities law violators do not profit from their illegal activity. Penalties represent fines levied on violators of federal securities laws. Payment of a disgorgement can be either completely or partially waived based on a defendant's sworn representations of financial condition. If a waiver is granted, the Commission does not assess a penalty" (USSEC 2005, p. 2).

Prejudgment Interest Charges. "Prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. Prejudgment interest shall be due from the first day of the month following each such violation through the last day of the month preceding the month in which payment of disgorgement is made. The order shall state the amount of prejudgment interest owed as of the date of the disgorgement order and that interest shall continue to accrue on all funds owed until they are paid" (USSEC 2006a, p. 88).

"Interest on the sum to be disgorged is computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The Commission or the hearing officer

may, by order, specify a lower rate of prejudgment interest as to any funds which the respondent has placed in an escrow or otherwise guaranteed for payment of disgorgement upon a final determination of the respondent's liability. Escrow and other guarantee arrangements must be approved by the Commission or the hearing officer prior to entry of the disgorgement order" (USSEC 2006a, p. 88).

Creation of Disgorgement Fair Fund. The SEC or the hearing officer may order that the amount of the disgorgement and of the civil money penalty, together with any funds received by the Commission, be used to create a fund for the benefit of individuals harmed by the violation (USSEC 2006a). "While in some cases, ill-gotten gains disgorged by defendants are returned to defrauded investors, the Commission is not authorized to act on behalf of individual investors" (USSEC 2014e, p. 1).

Waiver or Reduction of SEC Enforcement Actions for FCPA Violations

In settled administrative proceedings, the SEC Enforcement staff may recommend that disgorgement be waived or reduced. However, the Commission makes the final decision. In civil actions, any settlement agreed to by the Commission must be approved by the district court (USSEC 2013f).

SEC's Framework for Evaluating Cooperation by Companies. The SEC's framework for evaluating cooperation by companies is set forth in its 2001 *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions*, which is commonly known as the *Seaboard Report* (USSEC 2013f). The report, which explained the Commission's decision not to take enforcement action against a public company or individual for certain accounting violations

caused by its subsidiary, details the factors that the SEC considers in determining whether, and to what extent, it grants leniency to companies for cooperating in its investigations and for related good corporate citizenship. Specifically, the report identifies four broad measures of a company's cooperation (USSEC 2013f, pp. 121-122):

- self-policing prior to the discovery of the misconduct, including establishing effective compliance procedures and an appropriate tone at the top;
- self-reporting of misconduct when it is discovered, including conducting a thorough review of the nature, extent, origins, and consequences of the misconduct, and promptly, completely, and effectively disclosing the misconduct to the public, to regulatory agencies, and to self-regulatory organizations;
- remediation, including dismissing or appropriately disciplining wrongdoers, modifying and improving internal controls and procedures to prevent recurrence of the misconduct, and appropriately compensating those adversely affected; and
- cooperation with law enforcement authorities, including providing SEC staff with all information relevant to the underlying violations and the company's remedial efforts.

"Since every enforcement matter is different, this analytical framework sets forth general principles but does not limit SEC's broad discretion to evaluate every case individually on its own unique facts and circumstances. Credit for cooperation by

companies may range from taking no enforcement action to pursuing reduced sanctions in connection with enforcement actions" (USSEC 2013f, p. 122).

SEC's Framework for Evaluating Cooperation by Individuals. "In 2010, SEC announced a new cooperation program for individuals" (USSEC 2013f, p. 55). The SEC staff has a wide range of tools to facilitate and reward cooperation by individuals (no enforcement action to reduced sanctions). The evaluation of cooperation depends on the specific circumstances, but the SEC generally evaluates four factors to determine whether, to what extent, and in what manner to credit cooperation by individuals (USDOJ and USSEC 2012, pp. 55-56):

- the assistance provided by the cooperating individual in SEC's investigation or related enforcement actions, including, among other things: the value and timeliness of the cooperation, including whether the individual was the first to report the misconduct to SEC or to offer his or her cooperation; whether the investigation was initiated based upon the information or other cooperation by the individual; the quality of the cooperation, including whether the individual was truthful and the cooperation was complete; the time and resources conserved as a result of the individual's cooperation; and the nature of the cooperation, such as the type of assistance provided;
- the importance of the matter in which the individual provided cooperation;
- the societal interest in ensuring that the cooperating individual is held accountable for his or her misconduct, including the severity of the

individual's misconduct, the culpability of the individual, and the efforts undertaken by the individual to remediate the harm; and

- the appropriateness of a cooperation credit in light of the profile of the cooperating individual.

VI. FCPA ENFORCEMENT ACTIONS—USSEC & USDOJ

"The SEC may bring civil enforcement actions against issuers and their officers, directors, employees, stockholders, and agents for violations of the anti-bribery or accounting provisions of the FCPA. Companies and individuals that have committed violations of the FCPA may have to disgorge their ill-gotten gains plus pay prejudgment interest and substantial civil penalties. Sanctions for violations can be significant" (USSEC 2014c, p. 1).

One issue of concern when evaluating FCPA enforcement cases settled in any given year relates to multiple periods and parties. There often is a significant time lag between the occurrence and discovery of an alleged FCPA event and when the SEC investigates the allegation and any subsequent judgment related to the case. Given that multiple parties may be involved in the violation, more than one enforcement action may be appropriate or a subsequent issue or issues may surface after the initial investigation and enforcement action has been taken; so multiple actions may be issued by the SEC and/or the DOJ related to a FCPA event at one single company. The following FCPA-related cases illustrate such a time lag: the first case was settled in 2002 (USSEC 2002), prior to the period under review, while the next case was settled in 2007 (USSEC 20071), during the period currently under review:

December 10, 2002

The SEC settled civil and administrative proceedings against Syncor arising out of alleged

payments made by certain Syncor's foreign subsidiaries. Without admitting or denying the allegations, Syncor consented to pay a \$500,000 civil penalty and to be subject to a cease-and desist order. At the same time, the DOJ settled criminal FCPA charges against Syncor Taiwan, which consented to pay a \$2 million fine (USSEC 2002).

September 27, 2007

The SEC filed a settled civil injunctive action against founder and chair of Syncor International Corporation, Monty Fu. The action stemmed from payments made by Syncor Taiwan, Inc. over a 17-year period (1985-2002). The SEC charged Fu with violating, and aiding and abetting Syncor's violations of, the books-and- records and internal-accounting-controls provisions of the FCPA. Without admitting or denying the allegations in the SEC's complaint, Fu consented to the entry of a final judgment permanently enjoining him from future violations and ordering him to pay a civil penalty of \$75,000 (USSEC 2007l).

Based on the enforcement actions for FCPA cases published by the SEC (USSEC 2014h), 98 FCPA enforcement actions are analyzed. The SEC and the DOJ enforcement actions by calendar year for the 2006–2013 period first are summarized. As previously discussed, the SEC created a specialized unit in January 2010 to further enhance its enforcement of the FCPA. Given the time lags for FCPA cases, enforcement actions settled by the SEC and the DOJ are then summarized by calendar year for two four-year periods: the first period is 2006–2009, four years before the creation of the SEC's specialized enforcement unit and the second period is 2010–2013, four years after its creation. The two four-year periods are compared, illustrations of seven FCPA events

and/or enforcement actions that occurred during 2006–2013 are presented, and finally, the countries identified in the 2006–2013 SEC judgments and their corresponding CPI metrics are discussed.

FCPA Enforcement Actions: 2006–2013

Ninety-eight FCPA enforcement actions were filed and settled during 2006–2013. Enforcements actions were filed and settled against both issuers and individuals (officers, directors, employees, etc.). The 98 enforcement actions are summarized by calendar year and respondent(s) in **TABLE 1**. The totals of these SEC and DOJ judgments for FCPA violations are summarized in **TABLE 2** and depicted in **FIGURE 1**. As shown in **FIGURE 1**, the largest SEC and DOJ judgments were settled in 2010. Judgments settled by the SEC and the DOJ in 2010 were \$545.5 million and \$856.7 million, respectively.

Total judgments settled by the SEC for the eight-year period was \$1.8823 billion (**Panel C of TABLE 2**). Total disgorgements and prejudgment interest charges and civil penalties were \$1.7237 billion (91.6%) and \$158.7 million (8.4%), respectively. SEC judgments settled during the 2006–2009 period represent 40.7% (\$765.8 million ÷ \$1.8823 billion) of the total SEC judgments settled during the eight-year period, while SEC judgments settled during the 2010–2013 period represent 59.3% (\$1.1165 million ÷ \$1.8823 billion) of the total SEC judgments settled during the eight-year period.

Total judgments for criminal penalties and restitutions settled by the DOJ for the eight-year period were \$2.4644 billion and \$10.8 million, respectively (**Panel C of TABLE 2**). DOJ judgments settled during the 2006–2009 period represent 38.5% (\$948.8 million ÷ \$2.4644 billion) of the total DOJ judgments settled during the eight-year period, while DOJ judgments settled during the 2010–2013 period represent 61.5% (\$1.5157 billion ÷ \$2.4644 billion) of the total DOJ judgments settled during the eight-year period.

FCPA Enforcement: 2006–2009

Forty-nine FCPA enforcement actions were filed and settled during 2006–2009. Total judgments settled by the SEC for the four-year period were \$765.8 million (**Panel A of TABLE 2**). Total disgorgements and prejudgment interest charges and civil penalties were \$673.4 million (87.9%) and \$92.4 million (12.1%), respectively. Total judgments for criminal penalties and restitutions settled by the DOJ for the four-year period were \$948.8 million (98.9%) and \$10.8 million (0.1%), respectively.

The proportional distribution (calendar year ÷ \$765.8 million) of judgments settled by the SEC during 2006–2009 were 9% (\$68.7 million in 2006), 12.4% (\$94.6 million in 2007), 51.3% (\$393.2 million in 2008), and 27.3% (\$209.3 million in 2009). The proportional distribution (calendar year ÷ \$959.6 million) of judgments settled by the DOJ during 2006–2009 were 1.9% (\$18 million in 2006), 2.9% (\$27.7 million in 2007), 52.2% (\$501.1 million in 2008), and 43.0% (\$412.8 in 2009). These statistics make sense given that the largest judgments for disgorgement and prejudgment interest settled by the SEC and criminal penalties settled by the DOJ across the eight-years analyzed were entered against Siemens AG on December 15, 2008 for \$350 million and \$450 million, respectively (USSEC 2008j). In addition, one criminal judgment settled by the DOJ on September 3, 2008 was entered against Albert Jackson Stanley, former executive of Kellogg, Brown & Root, Inc. (KBR) (USSEC 2008i). Stanley pled guilty to one count of conspiring to violate the FCPA. His plea called for seven years in prison and payment of \$10.8 million in restitution.

FCPA Enforcement Actions: 2010–2013

Forty-nine cases were filed during 2010–2013. Total judgments settled by the SEC for the four-year period was \$1.1165 billion (**Panel B of TABLE 2**). Total disgorgements and prejudgment interest charges and civil penalties were \$1.0503

billion (94.1%) and \$66.2 million (5.9%), respectively. Total judgments for criminal penalties settled by the DOJ for the four-year period were \$1.5157 billion.

The proportional distribution (calendar year ÷ \$1.1165 billion) of judgments settled by the SEC during 2010–2013 were 48.9% (\$545.5 million in 2010), 13.3% (\$148.1 million in 2011), 10.9% (\$122.0 million in 2012), and 26.9% (\$300.9 million in 2013). The proportional distribution (calendar year ÷ \$1.5157 billion) of judgments settled by the DOJ during the 2010–2013 period were 56.5% (\$856.7 million in 2010), 7.0% (\$106.1 million in 2011), 4.3% (\$65.0 million in 2012), and 32.2% (\$487.9 million in 2013). These statistics also make sense given that the following four enforcement actions settled in 2010 and two enforcement actions settled in 2013 were some of the largest SEC and DOJ settlements across the eight-year period:

1. Daimier AG on April 1, 2010 for \$91.4 million and \$93.6 million, respectively (USSEC 2010c);
2. Technip SA on June 28, 2010 for \$98 million and \$240 million, respectively (USSEC 2010e);
3. ENI and Snamprogetti Netherlands BV on July 7, 2010 for \$125 million and \$240 million, respectively (USSEC 2010g);
4. Seven Oil Services and Freight Forwarding Companies on November 4, 2010 for \$77.7 million and \$156.6 million, respectively (USSEC 2010m);
5. Total S.A. on May 29, 2013 for \$153 million and \$245.2 million, respectively (USSEC 2013e); and

6. Weatherford International November 26, 2013 for \$63.7 million and \$187 million, respectively (USSEC 2013i).

FCPA Enforcement Actions: Comparison of 2006–2009 & 2010–2013 Periods

The SEC created a specialized unit in January 2010 to further enhance its enforcement of the FCPA and because of the time lags between the discovery of an alleged FCPA event and subsequent judgments and that there may be multiple parties involved in a given violation, the enforcement actions taken by the SEC and the DOJ are evaluated for 2006–2009, four years before the creation of the SEC's specialized enforcement unit and 2010–2013, four years after its creation.

Total FCPA judgments settled by the SEC for these two four-year periods are depicted in **FIGURE 2**. FCPA judgments settled by the SEC during 2006–2009 and 2010–2013 were \$765.8 and \$1,116.5, respectively. In short, the SEC settled \$350.7 million more FCPA-related judgments during the 2010–2013 period compared to the 2006–2009 period.

Total FCPA judgments settled by the DOJ for these two four-year periods are depicted in **FIGURE 3**. FCPA judgments settled by the DOJ during 2006–2009 and 2010–2013 were \$959.6 and \$1,515.7, respectively. In other words, the DOJ settled \$556.1 million more FCPA-related judgments during 2010–2013 compared to the 2006–2009 period. In summary, the above statistics suggest a cooperative working relationship in FCPA investigations among the SEC and its specialized unit, the U.S. Department of Justice, and foreign law enforcement agencies and securities regulators.

While not detailed in the current tables or figures, two other FCPA-related statistics are worth noting: three enforcement actions [Alcoa (USSEC 2014a), Hewlett-Packard (USSEC 2014b), and Smith & Wesson (USSEC 2014d)] have been settled during 2014

(as of July 28, 2014). These three judgments resulted in \$211 million in disgorgements, prejudgment interest charges, and civil penalties settled by the SEC and \$283.2 million in criminal penalties settled by the DOJ in parallel cases.

Illustrations of FCPA Events and Enforcement Actions: 2006–2013

A brief discussion of seven FCPA-related events or actions are presented to illustrate the 2006–2013 period.

SEC's Deferred Prosecution Agreement Program. In 2010, the SEC established a 'Deferred Prosecution Agreement' (DPA) program (USSEC 2013f). The DPA is a written agreement between the Commission and a potential cooperating individual or company in which the Commission agrees to forego an enforcement action against the individual or company if the individual or company agrees to, among other things (USSEC 2013f, p. 128):

1. cooperate truthfully and fully in the SEC's investigation and related enforcement actions;
2. enter into a long-term tolling agreement;
3. comply with express prohibitions and/or undertakings during a period of deferred prosecution; and
4. under certain circumstances, agree either to admit or not to contest underlying facts that the SEC could assert to establish a violation of the federal securities laws.

"If the agreement is violated during the period of deferred prosecution, the SEC staff may recommend an enforcement action

to the Commission against the individual or company without limitation for the original misconduct as well as any additional misconduct. Furthermore, if the Commission authorizes the enforcement action, the staff may use any factual admissions made by the cooperating individual or company to file a motion for summary judgment, while maintaining the ability to bring an enforcement action for any additional misconduct at a later date" (USSEC 2013f, p. 128).

Tenaris S.A.—Deferred Prosecution Agreement. The SEC entered into a DPA with Tenaris S.A. in its first-ever use of the approach to facilitate and reward cooperation in SEC investigations (USSEC 2011i). The SEC alleged that Tenaris had bid on a series of contracts in 2006 and 2007 and bribed Uzbekistan officials to gain access to confidential bids by competitors. Tenaris used the information to revise its own bids, and as a result was awarded several contracts by the Uzbekistan government. When Tenaris conducted a thorough, worldwide internal review of its operations and controls, it discovered FCPA violations by personnel in Uzbekistan and informed the SEC. In response to its findings, Tenaris reviewed its controls and compliance measures and significantly enhanced its anti-corruption policies and practices. The company agreed to cooperate further with the SEC, DOJ, and any other law enforcement agency in connection with the case. In addition, Tenaris agreed to pay a \$3.5 million criminal penalty in a NPA imposed by the DOJ (USSEC 2011i).

Armor Holdings, Inc. The SEC charged Armor Holdings, Inc. with violating the FCPA by participating in a bribery scheme from 2001 through 2006 to obtain contracts to supply body armor to use in United Nations peacekeeping missions. The SEC also charged Armor, a Florida-based manufacturer of military and law enforcement safety equipment, with failing to properly account for more than \$4 million in commissions from 2001 through 2007 in

violation of the books and records and internal controls provisions of the federal securities laws. On July 13, 2011, without admitting or denying the allegations, Armor Holdings consented to the entry of a permanent injunction against further violations and agreed to pay \$1,552,306 in disgorgement, \$458,438 in prejudgment interest, and a civil money penalty of \$3,680,000. Armor Holdings also agreed to pay a \$10.29 million fine to settle a parallel criminal investigation with the DOJ (USSEC 2011j).

SEC's Non-Prosecution Agreement Program. In 2012, the SEC established a Non-Prosecution Agreement (NPA) program (USSEC 2013f). It is a part of the SEC Enforcement Division's Cooperation Initiative, which rewards cooperation in SEC investigations. The NPA is a written agreement between the Commission and a potential cooperating individual or company, entered in limited and appropriate circumstances, which provides that the Commission will not pursue an enforcement action against the individual or company if the individual or company agrees to, among other things (USSEC 2013f, p. 130):

1. cooperate truthfully and fully in the SEC's investigation and related enforcement actions; and
2. comply, under certain circumstances, with express undertakings.

"If the agreement is violated, the SEC staff retains its ability to recommend an enforcement action to the Commission against the individual or company without limitation" (USSEC 2013f, p. 130).

Ralph Lauren Corporation—Non-Prosecution Agreement. In April 2013, the SEC entered into its first NPA agreement involving FCPA violations (USSEC 2013d). The SEC concluded that it would not charge Ralph Lauren Corporation with violations of the FCPA due to the company's prompt reporting of

the violations on its own initiative and the company's real-time cooperation with the SEC's investigation (USSEC 2013d). The SEC determined that Ralph Lauren Corporation's Argentine subsidiary paid bribes to government and customs officials to improperly secure the importation of the company's products in Argentina without the necessary paperwork, avoid inspection of prohibited products, and avoid inspection by customs officials. The bribe payments and gifts to Argentine officials totaled \$593,000 during a four-year period. The Ralph Lauren Corporation agreed to pay \$593,000 in disgorgement and \$141,846 in prejudgment interest (USSEC 2013d).

Former Siemens officer and board member. On April 16, 2013, a final judgment against Uriel Sharef, a former officer and board member of Siemens was settled (USSEC 2013c). The final judgment, to which Sharef consented, enjoins him from violating the anti-bribery and related internal controls provisions of the FCPA and ordered him to pay a \$275,000 civil penalty, the second highest penalty assessed by the SEC against an individual in an FCPA case (USSEC 2013c).

Humanitarian Goods to Iraq under the United Nations Oil for Food Program. During 2006–2013, 15 FCPA enforcement actions were settled against companies and/or individuals involved in Oil for Food-related kickback schemes with Iraq. Without admitting or denying the allegations, judgments were settled by the SEC and parallel DOJ cases with the following companies and/or individuals: (1) Textron Inc. (USSEC 2007g); (2) York International Corporation (USSEC 2007m); (3) Ingersoll-Rand Company Ltd. (USSEC 2007n); (4) Chevron Corporation (USSEC 2007o); (5) Akzo Nobel N.V. (USSEC 2007q); (6) Flowserve Corporation (USSEC 2008b); (7) AB Volvo (USSEC 2008c); (8) Siemens AG (USSEC 2008j); (9) Fiat S.p.A. (USSEC 2008k); (10) Novo Nordisk A/S (USSEC 2009c); (11) ARCO Corporation (USSEC 2009j); (12) General Electric, Ionics Inc. and

Amersham plc. (USSEC 2010h); (13) David P. Turner and Ousama M. Naaman (USSEC 2010i); (14) ABB Ltd (USSEC 2010l); and (15) Weatherford International (USSEC 2013i). These 15 settlements included the following financial sanctions imposed by the SEC and the DOJ: (1) disgorgement and prejudgment interest totaling \$502.6 million; (2) civil penalties totaling \$44.4 million; and (3) criminal penalties totaling \$148.3 million.

Countries Identified in USSEC Judgments for FCPA Violations and CPI Scores: 2006–2013

"Transparency International is the global civil society organisation leading the international fight against corruption" (TI 2013a, p. 2). According to Huguette Labelle, Chair of Transparency International (TI 2013b, p. 1):

It is time to stop those who get away with acts of corruption. The legal loopholes and lack of political will in government facilitate both domestic and cross-border corruption, and call for our intensified efforts to combat the impunity of the corrupt.

Transparency International has been developing and publishing annually the Corruption Perceptions Index (CPI) metrics since 1995. The CPI index is the best-known corruption indicator and has been in academic and legal literatures and the media. Lower scores reflect countries with more corruption (0 = highly corrupt), while higher scores reflect countries with less corruption (100 = very clean).² One note of caution about the CPI should be disclosed. The CPI measures corruption, a broader construct than is codified in the FCPA statute. However, there are no other comparable indexes that measure bribery only. In short,

² Note that prior to 2012, the CPI scale was 0 = highly corrupt and 10 = very clean (TI 2011).

the CPI is still the most reliable index available used to measure bribery Lippitt (2013).

For the CPI 2013, "177 countries and territories around the world" (TI 2013a, p. 4) are ranked on their perceived levels of public sector corruption. In 2013, 69% of countries worldwide have scores less than 50, "indicating a serious corruption problem" (TI 2013a, p. 4).

TABLE 3 provides a summary of the 71 countries identified in the SEC judgments for FCPA violations, along with the corresponding CPIs. During 2006–2013, 29.6% (n = 21) of the countries in this study had a 2013 CPI of 50 or higher, while 69.4% (n = 50) had a 2013 CPI of less than 50. During the 2006-2013 period, China was identified in 25 SEC enforcement actions, the highest number of settled actions during the eight-year period. China's 2013 CPI is 40. Iraq was identified in 20 SEC enforcement actions, the second highest number of settled actions during the eight-year period. Iraq's 2013 CPI is 16. Denmark was identified in two SEC enforcement actions. Denmark's 2013 CPI was 91, the highest CPI score of the countries identified in the 2006-2013 enforcement actions, as well as the country with the highest 2013 CPI of the 177 countries. Norway was identified in one SEC enforcement action. Norway's 2013 CPI was 86, the second highest CPI score of the 71 countries and the fifth highest 2013 CPI of the 177 countries (TI 2013a). In summary, these data make sense given that in most instances the number of cases identified for a given country bears an inverse relationship with its CPI score (higher number of cases = lower CPA score).

VII. CONCLUSIONS

Over the past decade, the number of SEC and DOJ enforcement actions and financial settlements for FCPA violations have exploded. During 2006-2013, SEC and DOJ judgments for FCPA violations totaled \$1.882 billion and \$2.475 billion, respectively. During the 2006-2009 period, the largest SEC and

DOJ judgments for FCPA violations occurred in 2008 (\$393.2 million and \$501.1 million, respectively) and the second largest SEC and DOJ judgments for FCPA violations occurred in 2009 (\$209.3 million and \$412.8 million, respectively). During the 2010-2013 period, the largest SEC and DOJ judgments for FCPA violations occurred in 2010 (\$545.5 million and \$856.7, respectively) and the second largest SEC and DOJ judgments for FCPA violations occurred in 2013 (\$300.9 million and \$487.8, respectively). As shown in **TABLE 1** and depicted in **FIGURE 2** and **FIGURE 3**, significantly larger judgments were settled for FCPA violations during the 2010-2013 period compared to the 2006-2009 period.

One explanation for the increases in FCPA judgments is the creation of the SEC's FCPA specialized unit. In January 2010, the SEC announced that Cheryl Scarboro would serve as the first chief of the newly-created unit within the SEC's Division of Enforcement (USSEC 2010p). In September 2011, the SEC's Division of Enforcement announced that Kara Novaco Brockmeyer was named as the second chief of its FCPA specialized unit.³ Ms. Brockmeyer previously served as an Assistant Director in the Enforcement Division and supervised a number of complex investigations involving FCPA violations. She spearheaded the SEC's investigation of Halliburton Co., KBR Inc., Technip S.A., and ENI S.p.A. for FCPA violations resulting from a decades-long bribery scheme in Nigeria (USSEC 2011p).

Despite the quick turnover in leadership, the FCPA specialized unit has raised the SEC's profile on the global stage by playing a more active role in international regulatory working groups and building closer relationships with regulatory counterparts in other countries. It conducts more targeted sweeps and sector-wide investigations and leverages the efforts of the SEC, the DOJ, and foreign counterparts to level the playing field

³ Ms. Brockmeyer filled the position previously held by Cheryl Scarboro, who left the SEC in June 2011 after serving as the first chief of the FCPA specialized unit (USSEC 2011p).

worldwide. Because FCPA cases tend to have similar factual and legal issues, each case sets important precedent and serves as a guide to the corporate world. In short, consistent and aggressive enforcement by the SEC has set an international standard for non-U.S. regulators and can serve as an incentive to non-U.S. regulators to more closely regulate corrupt practices (USSEC 2010q). According to the previous director of SEC's Division of Enforcement, Robert Khuzami, "Enforcement of the FCPA remains a high priority for the Division ..." (USSEC 2011, p. 1).

Another explanation for the increases in FCPA judgments during the past decade is lessons learned from weaknesses in the FCPA that were incorporated into the accounting and reporting provisions, the adequacy of internal controls (Section 404), and required certifications of the Chief Financial Officer and Chief Executive Officer codified in the Sarbanes-Oxley Act (2002). In short, this statute has forced public companies and their executives to be more vigilant and compliant with the guidelines of the FCPA (White 2009). According to Gulker, Buckberg, and Overdahl (2012), "post-SOX era is that FCPA cases settle for larger amounts than SEC settlements overall" (p. 21). In addition, the Commission settled FCPA-related enforcement actions with 20 defendants in fiscal 2010, the largest number of actions and financial sanctions in any fiscal year since Sarbanes-Oxley (Larsen, Overdahl, and Buckberg 2010).

The SEC, through its Division of Enforcement, and the DOJ are jointly responsible for enforcing the Foreign Corrupt Practices Act (FCPA). One significant issue found in the 2006-2013 FCPA enforcement actions relates to the use of alternative dispute resolutions (DPA and NPA) between the entity and the SEC and the DOJ without any admission of guilt on the part of the respondent, in exchange for a company's agreement such as paying disgorgement and large fines. As discussed in the literature review section of this paper, some legal commentators question the use of the alternative dispute resolutions to settle enforcement actions by the SEC and the DOJ.

Some commentators have called for statutory reform and reduced enforcement arguing that the regulatory costs exceed the benefits derived and curtail U.S. businesses from competing, while other commentators have suggested that maintaining the status quo with aggressive oversight and enforcement is necessary. While the debate may continue, the U.S. Congress tasked the SEC and the DOJ with enforcement of the FCPA statute. To that end, it seems reasonable to assume that the work of the SEC's FCPA specialized unit signals its ongoing focus on investigations and enforcement actions of FCPA violations.

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- (2008h). Litigation Release No. 20690, *SEC Files Settled Enforcement Action Charging Con-way Inc. with Violations of the Foreign Corrupt Practices Act* (27 August). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2008i). SEC Charges Former CEO of Kellogg, Brown & Root, Inc. with Foreign Bribery (3 September) (Press Release 2008-189). [www.sec.gov (Retrieval Date: August 11, 2014)].

- (2008j). SEC Charges Siemens AG for Engaging in Worldwide Bribery (15 December) (Press Release 2008-294). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2008k). Litigation Release No. 20835, *SEC Files Settled Books and Records and Internal Controls Charges against Fiat S.p.A. and CNH Global N.V. For Improper Payments to Iraq Under the U.N. Oil for Food Program — Fiat Agrees to Pay Over \$10 Million in Disgorgement, Interest, and Penalties* (22 December). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2009d). Litigation Release No. 21063, *SEC Sues Former President of United Industrial Corporation Subsidiary for Authorizing the Payment of Foreign Bribes* (29 May). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2009e). Accounting and Auditing Enforcement Release No. 2981, *In the Matter of United Industrial Corporation, Respondent, Corrected Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order* (29 May). [www.sec.gov (Retrieval Date: August 11, 2014)].

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- (2009g). Accounting and Auditing Enforcement Release No. 3026, *In the Matter of Helmerich & Payne, Inc., Respondent, Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order* (30 July). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2009h). Litigation Release No. 21162, *SEC Charges Nature's Sunshine Products, Inc with Making Illegal Foreign Payments* (31 July). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2009i). Litigation Release No. 21190, *SEC Sues Former Sales Executive for Foreign Bribery* (28 August). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2009j). Litigation Release No. 21229, *SEC Files Settled Books and Records and Internal Controls Charges Against AGCO Corporation for Improper Payments to Iraq Under the U.N. Oil for Food Program — AGCO Agrees to Pay Over \$18.3 Million in Disgorgement, Interest, and Penalties* (30 September). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2009l). Litigation Release No. 21357, *SEC Charges California Telecom Company with Bribery and Other FCPA Violations* (31 December). [www.sec.gov (Retrieval Date: August 11, 2014)].

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- (2010b). SEC Charges Innospec for Illegal Bribes to Iraqi and Indonesian Officials (18 March) (Press Release 2010-40). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010c). SEC Charges Daimler AG with Global Bribery (1 April) (Press Release 2010-51). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010d). Litigation Release No. 21509, *SEC Files Anti-Bribery Charges Against Former Finance Executives and Senior Employees Of Global Tobacco Company* (29 April). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2010h). SEC Charges General Electric and Two Subsidiaries with FCPA Violations (27 July) (Press Release 2010-133). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010i). SEC Charges Two Individuals for Roles in Innospec FCPA Scheme (5 August) (Press Release 2010-141). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010j). Litigation Release No. 21617, *SEC Charges Former Employee of Pride International With Violating the Foreign Corrupt Practices Act* (5 August). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010k). SEC Charges Two Global Tobacco Companies with Bribery (6 August) (Press Release 2010-144). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010l). SEC Charges ABB for Bribery Schemes in Mexico and Iraq (29 September) (Press Release 2010-175). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010m). SEC Charges Seven Oil Services and Freight Forwarding Companies for Widespread Bribery of Customs Officials (4 November) (Press Release 2010-214). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2010o). SEC Charges Alcatel-Lucent with FCPA Violations (27 December) (Press Release 2010-258). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2010p). SEC Names New Specialized Unit Chiefs and Head of New Office of Market Intelligence (13 January) (Press Release 2010-5). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2011d). Litigation Release No. 21889, *IBM To Pay \$10 Million In Settled FCPA Enforcement Action* (18 March). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2011e). Accounting and Auditing Enforcement Release No. 3255, *In the Matter of Ball Corporation, Respondent, Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, Imposing a Cease-and-Desist Order and a Civil Money Penalty* (24 March). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2011f). Litigation Release No. 21920, *SEC Files Settled FCPA Case Against Comverse* (7 April). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2011g). SEC Charges Johnson & Johnson with Foreign Bribery (7 April) (Press Release 2011-87). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2011h). Accounting and Auditing Enforcement Release No. 3274, *In the Matter of Rockwell Automation, Inc., Respondent, Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order* (3 May). [www.sec.gov (Retrieval Date: August 11, 2014)].

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- (2011j). SEC Charges Armor Holdings, Inc. With FCPA Violations in Connection With Sales to the United Nations (13 July) (Press Release 2011-146). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2011k). SEC Charges Liquor Giant Diageo with FCPA Violations (27 July) (Press Release 2011-158). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2011l). Accounting and Auditing Enforcement Release No. 3328, *In the Matter of Watts Water Technologies, Inc. and Leesen Chang, Respondents, Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Orders and Civil Penalties* (13 October). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2011m). SEC Charges Seven Former Siemens Executives with Bribing Leaders in Argentina (13 December) (Press Release 2011-263). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2011o). SEC Charges Magyar Telekom and Former Executives with Bribing Officials in Macedonia and Montenegro (29 December) (Press Release 2011-279). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2012g). SEC Charges Oracle Corporation with FCPA Violations Related to Secret Side Funds in India (16 August) (Press Release 2012-158). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2012h). SEC Charges Tyco for Illicit Payments to Foreign Officials (24 September) (Press Release 2012-196). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2012j). SEC Charges Eli Lilly and Company with FCPA Violations (20 December) (Press Release 2012-273). [www.sec.gov (Retrieval Date: August 11, 2014)].

- (2013a). Accounting and Auditing Enforcement Release No. 3452, *In the Matter of Koninklijke Philips Electronics N.V., Respondent, Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Order and Disgorgement* (5 April). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2013b). Litigation Release No. 22672, *SEC Charges Parker Drilling Company with Violating the Foreign Corrupt Practices Act* (16 April). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2013c). Litigation Release No. 22676, *Former Siemens Executive Uriel Sharef Settles Bribery Charges* (16 April). [www.sec.gov (Retrieval Date: August 11, 2014)].
- (2013d). SEC Announces Non-Prosecution Agreement With Ralph Lauren Corporation Involving FCPA Misconduct (22 April) (Press Release 2013-65). [www.sec.gov (Retrieval Date: August 11, 2014)].
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- (2013i). SEC Charges Weatherford International with FCPA Violations (26 November) (Press Release 2013-252). [www.sec.gov (Retrieval Date: August 11, 2014)].

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 - (2013k). Enforcement Director Robert Khuzami to Leave SEC (9 January) (Press Release 2013-3). [www.sec.gov (Retrieval Date: August 11, 2014)].
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TABLE 1										
USSEC FCPA Enforcement Actions by Calendar Year										
2006-2013										
Year	No.	Date	Reference	In the Matter of (Respondent(s))	Year	No.	Date	Reference	In the Matter of (Respondent(s))	
2006	1	04/17/06	PR 2006-58	Tyco International Ltd.	2010	1	01/11/10	AAER 3102	NATCO Group Inc.	
	2	04/27/06	AAER 2424	Oil States International, Inc.		2	03/18/10	PR 2010-40	Innospec Inc.	
	3	07/05/06	AAER 2456	Samson, Munro, Campbell, and Whelan (ABB Ltd.)		3	04/01/10	PR 2010-51	DaimlerChrysler AG	
	4	08/15/06	LR 19803	Pillar (InVision Technologies)		4	04/28/10	LR 21509	Elkin, Myers, Reynolds, Williams (Alliance One)	
	5	09/06/06	LR 19821	Ott & Young (ITX Corp.)		5	06/28/10	PR 2010-110	Technip SA	
	6	09/14/06	AAER 2479	Brown (Willbros Group)		6	06/29/10	PR 2010-115	Veraz Networks	
	7	10/13/06	PR 2006-174	Statoil, ASA		7	07/07/10	PR 2010-119	ENI and Snamprogetti Netherlands BV	
	8	10/16/06	AAER 2493	Schnitzer Steel Industries, Inc.		8	07/27/10	PR 2010-133	General Electric, Ironics Inc. and Amersham pic	
2007	1	02/07/07	PR 2007-16	El Paso Corp.	9	08/05/10	PR 2010-141	David Turner and Ousama Naaman (Innospec)		
	2	02/13/07	AAER 2554	Dow Chemical Co.	10	08/05/10	AAER 3169	Joe Summers (Pride International)		
	3	03/06/07	AAER 2572	Martin (Monsanto)	11	08/06/10	PR 2010-144	Alliance One and Universal Corporation		
	4	04/26/07	PR 2007-77	Baker Hughes Inc and Fearnley	12	09/29/10	PR 2010-175	ABB Ltd.		
	5	06/29/07	LR 20174	Si Chan Wooh (Schnitzer Steel)	13	11/04/10	PR 2010-214	Seven Oil Services and Freight Forwarding Companies		
	4	07/26/07	AAER 2657	Delta & Pine Land Co., and Turk Deltapine, Inc.	14	12/10/10	PR 2010-242	RAE Systems		
	7	08/23/07	LR 20251	Textron Inc.	15	12/27/10	PR 2010-258	Alcatel-Lucent		
	8	09/25/07	AAER 2725	Electronic Data Systems	2011	1	01/24/11	PR 2011-21	Paul Jennings (Innospec)	
	9	09/25/07	AAER 2726	Chandramowli Srinivasan (Electronic Data System)		2	01/31/11	PR 2011-31	Maxwell Technologies	
	10	09/26/07	AAER 2727	Bristow Group		3	02/10/11	PR 2011-42	Tyson Foods	
	11	09/28/07	LR 20316	Gioacchino De Chericco & Immucor Inc.		4	03/18/11	AAER 3254	International Business Machines Corp. (IBM)	
	12	09/28/07	LR 20310	Monty Fu (Synco)		5	03/24/11	AAER 3255	Ball Corporation	
	13	10/01/07	LR 20319	York International		6	04/07/11	LR 21920	Comverse Technology	
	14	10/31/07	LR 20353	Ingersoll-Rand Company		7	04/08/11	PR 2011-87	Johnson & Johnson	
	15	11/14/07	PR 2007-230	Chewon Corp.		8	05/03/11	AAER 3274	Rockwell Automation	
	16	12/13/07	PR 2007-262	Robert Phillip (Schnitzer Steel)		9	05/17/11	PR 2011-112	Tenaris	
	17	12/20/07	LR 20410	Akzo Nobel N.V.		10	07/13/11	PR 2011-146	Armor Holdings	
	18	12/21/07	AAER 2760	Lucent Technologies		11	07/27/11	PR 2011-158	Diageo	
2008	1	02/14/08	LR 20457	Westinghouse Air Brake Technologies Corporation		12	10/13/11	AAER 3328	Watts Water Technologies and Leesen Chang	
	2	02/21/08	LR 20461	Flowsolve		13	12/13/11	PR 2011-263	Siemens executives	
	3	03/20/08	LR 20504	AB Volvo		14	12/20/11	AAER 3348	Aon Corporation	
	4	05/14/08	PR 2008-86	Willbros Group Inc.		15	12/29/11	PR 2011-279	Magyar Telekom	
	5	06/05/08	AAER 2836	Faro Technologies Inc.		2012	1	02/06/12	PR 2012-25	Smith & Nephew
	6	08/06/08	LR 20671	Ali Hozhabri			2	02/24/12	PR 2012-32	Noble Corporation executives
	7	08/27/08	AAER 2866	Con-way Inc.	3		03/26/12	PR 2012-50	Biomet	
	8	09/03/08	PR 2008-189	Albert Jackson Stanley (KBR)	4		04/25/12	PR 2012-78	Former Morgan Stanley executive	
	9	12/15/08	PR 2008-294	Siemens AG	5		07/10/12	PR 2012-133	Orthofix International	
	10	12/22/08	LR 20835	Fiat	6		08/07/12	PR 2012-152	Pfizer	
	11	05/06/08	LR 20556	Steven Ott and Robert Michael Young	7		08/16/12	PR 2012-158	Oracle	
	2009	1	02/11/09	PR 2009-23	KBR and Halliburton		8	09/24/12	PR 2012-196	Tyco International
2		02/11/09	AAER 2934	ITT Corp.	9		12/17/12	PR 2012-266	Allianz SE	
3		05/11/09	LR 21033	Novo Nordisk A/S	10		12/20/12	PR 2012-273	Eli Lilly and Company	
4		05/29/09	AAER 2980	Thomas Wurzel	2013		1	04/05/13	AAER 3452	Koninklijke Philips Electronics
5		05/29/09	AAER 2981	United Industrial Corp.		2	04/16/13	AAER 3454	Parker Drilling Company	
6		07/28/09	AAER 3020	Avery Dennison Corp.		3	04/22/13	PR 2013-65	Ralph Lauren Corporation	
7		07/30/09	AAER 3026	Helmerich & Payne Inc.		4	05/29/13	PR 2013-94	Total S.A.	
8		07/31/09	LR 21162	Nature's Sunshine		5	10/22/13	PR 2013-225	Diebold	
9		08/28/09	AAER 3041	Oscar Meza		6	10/24/13	PR 2013-229	Stryker Corporation	
10		09/30/09	LR 21229	AGCO Corp.		7	11/26/13	PR 2013-252	Weatherford International	
11		12/11/09	LR 21335	Bobby Benton		8	12/20/13	PR 2013-271	Archer-Daniels-Midland Co.	
12		12/31/09	AAER 3093	UTStarcom Inc.		9	04/16/13	LR 22676	Siemens executives	

Year(s)	USSEC Judgments			USDOJ Judgments		
	Disgorgements and Prejudgment Interest Charges	Civil Penalties	Totals	Criminal Penalties	Restitutions	Totals
<i>Panel A</i>						
2006	\$18,289,877	\$50,385,000	\$68,674,877	\$18,000,000		\$18,000,000
2007	\$71,446,218	\$23,180,000	\$94,626,218	\$27,650,000		\$27,650,000
2008	\$382,248,120	\$10,987,000	\$393,235,120	\$490,307,500	\$10,800,000	\$501,107,500
2009	<u>\$201,396,659</u>	<u>\$7,890,066</u>	<u>\$209,286,725</u>	<u>\$412,800,000</u>		<u>\$412,800,000</u>
2006-2009	<u>\$673,380,874</u>	<u>\$92,442,066</u>	<u>\$765,822,940</u>	<u>\$948,757,500</u>	<u>\$10,800,000</u>	<u>\$959,557,500</u>
<i>Panel B</i>						
2010	\$510,642,145	\$34,835,038	\$545,477,183	\$856,715,000		\$856,715,000
2011	\$138,422,025	\$9,705,000	\$148,127,025	\$106,114,000		\$106,114,000
2012	\$105,983,549	\$16,050,649	\$122,034,198	\$64,980,000		\$64,980,000
2013	<u>\$295,229,091</u>	<u>\$5,650,000</u>	<u>\$300,879,091</u>	<u>\$487,842,000</u>		<u>\$487,842,000</u>
2010-2013	<u>\$1,050,276,810</u>	<u>\$66,240,687</u>	<u>\$1,116,517,497</u>	<u>\$1,515,651,000</u>	<u>\$0</u>	<u>\$1,515,651,000</u>
<i>Panel C</i>						
2006-2013	<u>\$1,723,657,684</u>	<u>\$158,682,753</u>	<u>\$1,882,340,437</u>	<u>\$2,464,408,500</u>	<u>\$10,800,000</u>	<u>\$2,475,208,500</u>

Number of Country	Country	Number of SEC 'FCPA Enforcement Actions' for each country identified during 2006–2013	Transparency International 2013 CPI Score (where 0 = highly corrupt & 100 = very clean)	Number of Country	Country	Number of SEC 'FCPA Enforcement Actions' for each country identified during 2006–2013	Transparency International 2013 CPI Score (where 0 = highly corrupt & 100 = very clean)
1	Denmark	2	91	37	Greece	5	40
2	Norway	1	86	38	Mongolia	1	38
3	Switzerland	4	85	39	Malawi	2	37
4	Netherlands	1	83	40	India	7	36
5	Luxembourg	1	80	41	Philippines	2	36
6	Germany	6	78	42	Algeria	1	36
7	United Kingdom	5	76	43	Thailand	5	35
8	Japan	2	74	44	Ecuador	1	35
9	France	7	71	45	Argentina	8	34
10	United Arab Emirates	3	69	46	Mexico	6	34
11	Cyprus	1	63	47	Gabon	1	34
12	Israel	2	61	48	Indonesia	10	32
13	Taiwan	2	61	49	Egypt	5	32
14	Poland	4	60	50	Vietnam	4	31
15	South Korea	6	55	51	Albania	1	31
16	Hungary	1	54	52	Mauritania	1	30
17	Costa Rica	2	53	53	Mozambique	1	30
18	Rwanda	2	53	54	Russia	8	28
19	Latvia	1	53	55	Pakistan	1	28
20	Turkey	2	50	56	Bangladesh	3	27
21	Malaysia	1	50	57	Kazakhstan	4	26
22	Croatia	2	48	58	Honduras	1	26
23	Czech Republic	1	48	59	Nigeria	15	25
24	Cuba	1	46	60	Iran	3	25
25	Saudi Arabia	1	46	61	Ukraine	1	25
26	Jordan	3	45	62	Kyrgyzstan	2	24
27	Macedonia	1	44	63	Angola	3	23
28	Montenegro	1	44	64	Congo	1	22
29	Italy	6	43	65	Myanmar	1	21
30	Romania	2	43	66	Venezuela	6	20
31	Brazil	6	42	67	Equatorial Guinea	1	19
32	Bosnia	1	42	68	Uzbekistan	2	17
33	Serbia	1	42	69	Syria	1	17
34	Senegal	2	41	70	Iraq	20	16
35	Bulgaria	1	41	71	Sudan	1	11
36	China	25	40	Total ¹		245	
Countries Identified in 98 SEC FCPA Judgments during 2006–2013 with ≥ 50 CPI Score (21 ÷ 71)						21	29.6%
Countries Identified in 98 SEC FCPA Judgments during 2006–2013 with < 50 CPI Score (50 ÷ 71)						50	70.4%
Total Countries Identified in 98 SEC FCPA Judgments during 2006–2013						71	100.0%

¹ Total countries exceed number of SEC FCPA judgments (n = 98) because some judgments include more than one country.



