FCPA 2010

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NATCO Group Inc.

Conduct

- NATCO resolved allegations that it violated the FCPA's books and records and internal controls provisions as a result of improper payments made to Kazakh government officials and to a third party consultant in Kazakhstan.
- The civil complaint and administrative order stated that Test Automation & Controls, Inc. (TEST), a wholly-owned subsidiary of NATCO, created false documentation to cover its payments of extorted immigration fines and accepted fraudulent consultant invoices to cover the fees being paid for visas in Kazakhstan. NATCO's internal controls failed to ensure that TEST recorded the payments' true purpose and NATCO's books and records did not accurately reflect these payments.
- Specifically, the Securities and Exchange Commission (SEC) represented that in February and September 2007, Kazakh immigration prosecutors audited expatriate workers in TEST's office in Kazakhstan (TEST Kazakhstan). The prosecutors threatened to fine, jail or deport workers they claimed did not have proper documentation unless TEST Kazakhstan paid cash fines. TEST Kazakhstan employees used personal funds to pay prosecutors US US$25,000 in February and US US$20,000 in September. Subsequently, TEST reimbursed the employees. To disguise the February 2007 reimbursements to its employees, TEST inaccurately recorded the reimbursement payments in its books and records as "salary advances." To conceal the September 2007 payment, TEST recorded the reimbursements as "visa fines."
- The SEC also represented that one of the consultants TEST Kazakhstan used to obtain immigration documentation for its expatriate employees was

not licensed to provide such services, but maintained close ties to an employee in the ministry responsible for issuing visas. On two occasions the consultant requested and received cash from TEST Kazakhstan in exchange for him securing the visas. To conceal the cash requests, the consultant provided TEST Kazakhstan fake invoices for "cable" from third party entities that the consultant controlled. TEST Kazakhstan later submitted invoices totaling more than US$80,000 and which it knew to be fraudulent to TEST for reimbursement. TEST reimbursed these invoices despite knowing that the invoices mischaracterized the true purpose of the services rendered.

Penalties

- To resolve a civil action filed by the SEC, NATCO will pay a US$65,000 penalty.
- In an administrative proceeding, the SEC issued a cease and desist order prohibiting the company from committing or causing any further violations of the FCPA's books and records and internal controls provisions.

Notes

- The cease and desist order notes that as a result of a routine internal audit review in late 2007, NATCO discovered potential issues involving TEST and that NATCO took numerous remedial measures as a result. Specifically, the order notes that NATCO: conducted an internal investigation to examine TEST's operations in countries with historic FCPA concerns, in addition to Kazakhstan; disciplined and terminated employees; enhanced third party due diligence procedures; hired additional compliance personnel and appointed a Chief Compliance Officer; joined a nonprofit association specializing in antibribery due diligence; improved its FCPA compliance training worldwide; invested in software to assist in enhancing internal controls and compliance; restructured the internal audit function; and enhanced the monitoring and auditing process for the compliance program.

- The matter demonstrates that the SEC may pursue civil books and records and internal controls violations as a result of payments made to safeguard the wellbeing of employees overseas.

John W. Warwick

Conduct

- Warwick pleaded guilty to a one count indictment that charged him with conspiracy to violate the FCPA. More specifically, the indictment charged that Warwick and others conspired to make corrupt payments to Panamanian government officials for the purpose of securing business for Ports Engineering Consultants Corporation (PECC).
- PECC was a Panamanian company with an office in Richmond, Virginia. Warwick was president of PECC. PECC was affiliated with Overman Associates, a Virginia Beach, Virginia-based engineering firm. Warwick was the majority shareholder of Overman Associates and president of Overman de Panama, the latter being a Panamanian company organized to manage the Panamanian investments of its owner, Overman Associates. Overman de Panama had a management interest in PECC.
- In respect to the conspiracy, Warwick admitted that PECC was created so that Overman Associates and others could corruptly obtain a maritime contract from the Panamanian government. Warwick further admitted that he participated in a conspiracy to bribe Panamanian officials to award PECC contracts to maintain lighthouses and buoys along Panama's waterways. In exchange for receiving a 20 year no-bid contract from the Panamanian government, Warwick and others authorized bribes totaling more than US US$200,000 to the former administrator and deputy administrator of Panama's National Maritime Ports Authority and to a former, high-ranking elected official of the Republic of Panama.

Penalties

- Warwick was sentenced to 37 months in prison, followed by two years of supervised release.
- The indictment also contained a notice of forfeiture for US US$798,909.44, the proceeds traceable to the conspiracy. On February 10, 2010, as part of his plea agreement, Warwick agreed to forfeit US US$331,000.

Notes

- On November 13, 2009, Charles Paul Edward Jumet pleaded guilty to a two count criminal information that charged him with one count of conspiracy to violate the FCPA and one count of making a false statement to a federal agent. The Jumet enforcement action concerns the same subject matter as the Warwick matter. On April 19, 2010, Jumet was sentenced to 87 months in prison and ordered to pay a fine of US US$15,000.

Jean Fourcand and Robert Antoine

Conduct

- Fourcand pleaded guilty to a one count criminal information that charged him with engaging in a monetary transaction in property derived from specified unlawful activity, specifically, violations of the FCPA, wire fraud and the commercial bribery laws of Haiti.
- Fourcand admitted that between November 2001 and August 2002, Fourcand Enterprises Inc., an entity of which Fourcand was the president, received funds originating from US telecommunications companies for the benefit of Antoine, a former director of international relations of Haiti's state-owned telecommunications company, Telecommunications D'Haiti (Telecom Haiti).

- According to public records, various telecommunications companies sent money to Juan Diaz, the president of J.D. Locator Services Inc., who then dispersed the funds by issuing J.D. Locator Services checks payable to Fourcand Enterprises.[1] Fourcand admitted that he received a J.D. Locator Services check for US US$18,500 and deposited it into a Fourcand Enterprises account over which Fourcand had sole control. This check contained a false invoice number in an attempt to make the check reflect payment for legitimate services when in fact the funds were intended to illegally benefit Antoine. Fourcand admitted that he used these funds in a real estate transaction for Antoine's benefit. After purchasing and selling real estate, Fourcand transferred the transaction's proceeds to Antoine via a certified check issued by the bank at which Fourcand had a personal account.
- Antoine pleaded guilty to one count of money laundering conspiracy in connection with the bribery scheme above described. Specifically, Antoine admitted that he accepted US US$1,580,771 in bribes from US telecommunications companies and thereby defrauded Telecom Haiti. Antoine further admitted that bribes where laundered through shell companies' bank accounts using wire transfers and checks annotated with false memos to conceal the payments' true nature and source.

Penalty

- At sentencing Fourcand faces up to 10 years in prison, followed by three years of supervised release, and a fine of US US$250,000 or twice the value of property involved in the transaction. In addition, as part of his plea agreement, Fourcand agreed to forfeit US US$18,500 as proceeds related to the unlawful conduct described above.

[1] Diaz previously pleaded guilty on May 15, 2009 to conspiracy to violate the FCPA and commit money laundering. On July 30, 2010, US District Court Judge Jose E. Martinez sentenced Diaz to 57 months in prison and ordered him to serve three years of supervised release following his prison term. Judge Martinez also ordered Diaz to pay US$73,824 in restitution and to forfeit US$1,028,851. The forfeiture amount equaled what Diaz paid and concealed in bribes to former Haitian government officials while serving as an intermediary for three private telecommunications companies. For a full summary of the Diaz enforcement action *see* http://www.ssd.com/2009_fcpa_enforcement_actions/.

- Antoine was sentenced to four years in prison and three years of supervised release following his prison term. Antoine was also ordered to pay US$1,852,209 in restitution and forfeit US$1,580,771, which represented proceeds related to the unlawful activity.

Notes

- This matter illustrates the Department of Justice's (DOJ) enforcement trend of filing a variety of criminal charges in the FCPA context and, in some instances, not even charging an FCPA violation.
- In December 2009 four additional individuals were indicted for conduct arising out of the bribery scheme described above. Also in 2009 Antonio Perez, the former controller at a company identified as Terra Communications, pleaded guilty to conspiracy to violate the FCPA and commit money laundering.
- The DOJ credited the cooperation it received from the government of Haiti in resolving this matter. This cooperation illustrates that the law enforcement agencies in countries perceived to suffer from high levels of corruption, such as Haiti, will cooperate with the DOJ in US prosecutions.

BAE Systems plc

Conduct

- BAE Systems plc (BAE Systems) pleaded guilty to a one count criminal information that charged conspiracy to defraud the US by impairing and impeding its lawful functions, making false statements about its FCPA compliance program, and violating the Arms Export Control Act (AECA) and International Traffics in Arms Regulations (ITAR).
- According to public records, from approximately 2000 to 2002, BAE Systems represented to various US government agencies that it would create and implement policies and procedures to ensure compliance with the FCPA's

antibribery provisions. Despite BAE Systems' representations to the contrary, it knowingly and willfully failed to create such policies and procedures.

- BAE Systems, according to court records, made a series of substantial payments to shell companies and third party intermediaries that were not subject to the degree of scrutiny and review BAE Systems had represented to the US government they would be subjected. For example, BAE Systems admitted that it retained "marketing advisors" to assist in securing sales of defense items without scrutinizing these relationships. In fact, BAE Systems actively concealed from the US government these relationships and payments to these marketing advisors.
- BAE Systems admitted to making and causing to be made certain false, inaccurate and incomplete statements, and failing to make required disclosures to the US government including statements and disclosures related to applications for arms export licenses, as required by the AECA and ITAR.
- Finally, BAE Systems admitted knowingly and willfully failing to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense items in violation of the AECA and ITAR.

Penalty

- The sentencing court ordered BAE Systems to pay a US$400 million fine (twice the gain BAE Systems realized from its illegal conduct), serve three years of organizational probation and retain a monitor. The monitor must make regular reports to BAE Systems and the DOJ regarding BAE Systems' implementation and auditing of its FCPA, AECA and ITAR compliance programs.

Notes

- On the same day that BAE Systems pleaded guilty to the DOJ's criminal information, BAE Systems also resolved a related investigation undertaken by the UK's Serious Fraud Office (SFO). To resolve the UK investigation, BAE Systems plead guilty to violating Section 221 of the Companies Act of 1985 for failing to keep reasonably accurate accounting records in connection with payments made to a former marketing advisor that assisted BAE Systems in selling a radar system to the government of Tanzania. BAE Systems agreed to pay a £30 million (approximate US$47 million) penalty, comprised a fine to be determined by the UK court and the balance to be made as a charitable donation to benefit Tanzania.
- In the BAE Systems enforcement action, like the 2008 Siemens enforcement action, the DOJ did not charge either parent company with violating the FCPA's antibribery provisions, despite evidence to support such a charge. BAE Systems, like Siemens, is a major contractor for governments worldwide and an antibribery charge, much less conviction, would present significant public procurement ramifications, including debarment, potentially damaging the company beyond repair. In the government's sentencing memorandum, the DOJ stresses the potential significance of BAE Systems not having been convicted of an antibribery violation. The DOJ represents that it "will communicate with US debarment and regulatory authorities, and relevant foreign authorities, if requested to do so, regarding the nature of the offense of which [BAE Systems] has been convicted, the conduct engaged in by [BAE Systems], its remediation efforts, and the facts relevant to an assessment of whether [BAE Systems] is presently a responsibly government contractor."
- BAE Systems did not voluntarily disclose the illegal conduct, nor did it provide "substantive cooperation" after 2006. It also undertook only "modest" remediation efforts before being charged.

Nexus Technologies, Inc. and the Nguyens

Conduct

- The DOJ charged Nexus, Nam Nguyen, Kim Nguyen and An Nguyen in a superseding indictment with conspiracy, violations of the FCPA, violations of the Travel Act in connection with commercial bribes and money laundering.
- Nexus pleaded guilty to all charges filed against the company. Nam Nguyen, the company's president and owner, and An Nguyen, a company employee, pleaded guilty to conspiracy and substantive FCPA, Travel Act and money laundering violations. Kim Nguyen, Nexus' vice president, pleaded guilty to conspiracy, substantive FCPA and money laundering violations. A former Nexus employee, Joseph T. Lukas, pleaded guilty in 2009 to conspiracy and violating the FCPA.
- Public documents indicate that Nexus, a privately-owned export company, identified US vendors for contracts opened for bid by the Government of Vietnam and other companies operating in Vietnam. Nam Nguyen negotiated the contracts and bribes with Vietnamese government agencies and employees, referred to as "supporters" in Nexus parlance. Kim Nguyen oversaw the company's US operations and handled the company's finances. An Nguyen identified US vendors to supply the goods needed to fulfill the contracts.
- The defendants admitted that from 1999-2008 they agreed to pay, and knowingly paid, bribes in excess of US$250,000 to Vietnamese government officials in exchange for contracts with agencies and companies for which the bribe recipients worked. The bribes were often paid through a Hong Kong entity controlled by Nam Nguyen. The bribes were incorrectly recorded in Nexus' books and records as "commissions."

Penalties

- Nam Nguyen received a sentence of 16 months imprisonment and two years of supervised release following the prison term.
- An Nguyen was sentenced to nine months in prison followed by three years of supervised release.
- Kim Nguyen received two years of probation and a US$20,000 fine.
- Lukas was sentenced to two years of probation and ordered to pay a US$1,000 fine.
- Nexus acknowledged that it operated primarily through criminal means and agreed to cease operations as a condition of its guilty plea.

Notes

- This enforcement action demonstrates the DOJ's continued focus on prosecuting individuals.
- This enforcement action also demonstrates how the DOJ often attempts to resolve employees' criminal matters – as it did with Lukas – before resolving a related proceeding involving the employer.

Innospec Inc., Ousama M. Naaman and David P. Turner

Conduct

- Innospec resolved a corruption-related enforcement action brought by the DOJ, SEC, and the UK's SFO. Innospec also resolved an unrelated violation of the Trading with the Enemy Act (TWEA) and regulations promulgated thereunder by the US Treasury Department's Office of Foreign Assets Control (OFAC).
- To resolve the DOJ-initiated action, Innospec pleaded guilty to a 12-count criminal information that charged conspiracy to commit wire fraud and violate

the FCPA's antibribery and books and records provisions, as well as substantive wire fraud and FCPA antibribery and books and records violations. The information charged wire fraud in connection with kickback payments made by Alcor, Innospec's Swiss subsidiary, to the former Government of Iraq under the UN Oil for Food Program (OFFP) and FCPA violations in connection with bribes made to officials in the Iraqi Ministry of Oil. According to public records, from 2000-2003 Alcor received five OFFP contracts valued at more than €40 million to sell tetraethyl lead (TEL), a compound used in leaded gasoline, to refineries run by the Iraqi Ministry of Oil.

- To obtain these contracts, Innospec admitted that Alcor paid or promised to pay at least US$4 million in kickbacks to the former Iraqi government. Public records further demonstrate that Alcor inflated the price of the contracts by approximately 10 percent to cover the costs of the kickbacks before submitting them to the UN for approval. Alcor also falsely characterized the payments on the company's books and records as "commissions" paid to Naaman, its agent in Iraq.
- Innospec further admitted to paying and promising to pay more than US$1.5 million in bribes in the form of cash ("pocket money"), lavish travel and high tech products, to officials of the Ministry of Oil to secure TEL contracts in Iraq from 2004-2008, as well as paying US$150,000 to Ministry of Oil officials to ensure that a product, MMT, that competed with TEL, was not approved for use in Iraqi refineries.
- In authorizing the creation of one false invoice, Turner, an Innospec business director wrote: "the fewer words the better." These payments were also recorded as "commissions," "remuneration for after sales service fees," or "promotional expenses" on the basis of false invoices, which were incorporated into the company's books and records.

- Innospec also admitted that it paid approximately US$2.9 million in bribes (referred to as “special commissions”) to officials of the Government of Indonesia in order to secure sales.
- To resolve the SEC enforcement action, Innospec did not contest allegations that it had violated the FCPA’s antibribery, books and records, and internal controls provisions in connection with the above described conduct.
- In a related action brought by the SFO, Innospec’s British subsidiary Innospec Ltd., pleaded guilty in connection with the payments made to the Indonesian government officials. The SFO’s case developed out of a referral from the DOJ in 2007.
- In addition, Innospec resolved unrelated allegations with OFAC that it had violated the TWEA and the Cuban Assets Control Regulations (CACR). The TWEA and CACR violations concerned Innospec’s sales of chemicals to Cuban power plants.
- In respect to Turner, the SEC alleged that he was among senior Innospec officials who directed and approved more than US$9.2 million in bribery payments either paid or promised to officials in Iraq or Indonesia. For example, Turner and senior Innospec officials directed Naaman to pay a bribe to Iraqi officials to ensure the failure of a 2006 field trial test of MMT. Turner and other Innospec officials also authorized payments, through Naaman, to fund lavish trips and provide “pocket money” for Iraqi officials.
- On June 24, 2010, Naaman pleaded guilty to a two count superseding information that charged him with one count of conspiracy to violate the wire fraud statute and the books and records provisions of the FCPA, and one substantive count of violating the FCPA.
- According to public documents, from 2001 to 2003, acting on behalf of Innospec, Naaman admitted that he offered and paid 10 percent kickbacks to the then Iraqi government in exchange for five contracts under the OFFP.

Naaman negotiated the contracts, including the 10 percent increase in the price to cover the kickback, and routed the funds to Iraqi government accounts in the Middle East. Innospec inflated its prices in contracts approved by the OFFP to cover the cost of the kickbacks.

- Naaman also admitted that from 2004 to 2008, he paid and promised to pay more than US$3 million in bribes, in the form of cash, travel, gifts and entertainment, to officials of the Iraqi Ministry of Oil and the Trade Bank of Iraq to secure TEL sales in Iraq, as well as to secure more favorable exchange rates on the contracts. Naaman provided Innospec with false invoices to support the payments, and those invoices were recorded in the books and records of Innospec.

Penalties

- To resolve all of the issues discussed above, Innospec agreed to pay US$40.2 million in combined penalties and disgorgement; to retain an independent compliance monitor for a minimum of three years to oversee the implementation of a "robust anti-corruption and export control compliance program"; and to report periodically to the DOJ and SEC. In addition, Innospec received five years of organizational probation.
- Notably, principally due to Innospec's imperiled financial condition, the combined US$25.3 million that the company will pay the DOJ (US$14.1 million) and SEC (US$11.2 million) is significantly less than both agencies might have otherwise sought. In respect to the DOJ action, Innospec agreed that its fine range was US$101.5-US$203.0 million, however due primarily to the company's weakened financial condition, a reduction was sought and approved by the court. In respect to the SEC, it determined that Innospec had earned more than US$60 million in profits from the illegal conduct, which were subject to disgorgement. The SEC, however, agreed to settle for only US$11.2 million in disgorgement and did not seek any additional civil

penalties. In addition, both the DOJ and SEC agreed to permit Innospec to make the payments in installments.

- To resolve the SEC enforcement action, Naaman agreed to disgorge US$810,076, plus prejudgment interest of US$67,030, and pay a penalty of US$438,038 that will be deemed satisfied by a criminal order requiring him to pay a criminal fine that is at least equal to the civil penalty amount. Naaman has not yet been sentenced in the criminal enforcement action. At sentencing he also faces a maximum prison sentence of 10 years.
- Turner agreed to disgorge US$40,000 to settle the SEC's charges against him.

Notes

- In resolving the Innospec enforcement actions, the DOJ and SEC demonstrated that they are willing to consider a corporate defendant's ability to pay when entering into a settlement agreement.
- The simultaneous announcements of the DOJ's and SFO's settlements illustrate the prosecutorial coordination that these countries' enforcement agencies have developed in recent years.

Daimler AG and Three Subsidiaries

Conduct

- Daimler AG, DaimlerChrysler Automotive Russia SAO (DCAR), Export and Trade Finance GmbH (ETF), and DaimlerChrysler China Ltd. (DCCL) resolved FCPA enforcement actions brought by the DOJ and or SEC concerning the companies' worldwide sales practices.
- To resolve the criminal action, Daimler AG entered into a three year deferred prosecution agreement (DPA) and agreed to the filing of a criminal information that charged it with one count of conspiracy to violate the FCPA's

books and records provisions and one substantive count of violating these provisions. DCCL also entered into a DPA and agreed to the filing of a criminal information that charged it with one count of conspiracy to violate the FCPA's antibribery provisions, and one count of violating those provisions. DCAR and ETF each pleaded guilty to criminal informations that charged both entities with one count of conspiracy to violate the antibribery provisions and one substantive count of violating those provisions.

- To resolve the SEC-initiated civil action, Daimler AG consented to the entry of a court order permanently enjoining it from future violations of the FCPA.
- According to public documents, Daimler AG engaged in a long-standing practice of bribing foreign government officials through a variety of mechanisms, including third party accounts (commonly referred to as "TPAs"), cash desks, offshore bank accounts, deceptive price arrangements and third party intermediaries. The government alleged that over a period of more than 10 years Daimler AG and its subsidiaries made hundreds of improper payments worth at least US$56 million to foreign officials in at least 22 countries to assist in obtaining contracts with government customers. Daimler AG and its subsidiaries frequently transferred these improper payments through US bank accounts or foreign bank accounts of US shell companies for the shell companies to pass on the bribes. The bribes were often identified and recorded as "commissions," "special discounts," "useful payments" or "necessary payments" – all of which Daimler employees understood to mean "official bribes." The government also alleged that this bribery permeated the corporate culture, was sanctioned by Daimler AG's management and continued during the course of the DOJ and SEC's investigations.
- DCAR admitted that it made improper payments to Russian government officials to secure sales. DCAR over-invoiced customers and paid the excess to the government officials or to designated third parties that provided no

legitimate services to DCAR or Daimler AG. When requested, DCAR or Daimler AG employees directed wire payments from Daimler AG's accounts in Germany to accounts held by shell companies, with the understanding that a portion, if not all, of the wire was for the benefit of Russian officials.

- ETF admitted that it made improper payments directly to Croatian government officials and third parties with the understanding that the payments would be passed on, at least in part, to Croatian officials to assist in securing the sales.
- DCCL admitted that it made improper payments in the form of commissions, travel and gifts for the benefit of Chinese government officials, or their designees, in connection with sales of commercial vehicles to various Chinese government customers.
- Daimler AG also admitted that it agreed to pay kickbacks to the former Iraqi government in connection with contracts to sell vehicles under the OFFP.

Penalties

- Daimler and its subsidiaries will pay US$185 million to resolve the DOJ and SEC enforcement actions. The judge in the DOJ action imposed criminal fines totaling US$93.6 million on the entities. The same judge in the SEC action ordered the disgorgement of US$91.4 million in ill-gotten gains.
- As noted above, Daimler AG agreed to enter into a three year DPA with the DOJ. The DPA requires Daimler AG to hire an independent compliance monitor to oversee the continued implementation and maintenance of an FCPA compliance program and to make regular reports to the DOJ. Daimler AG's subsidiaries come within the monitoring and reporting umbrella of the DPA.

Notes

- The Daimler enforcement action highlights several trends in recent FCPA prosecutions. First, a foreign issuer, Daimler AG, was prosecuted. Second, the DOJ entered into agreements to defer prosecution with some corporate defendants, while securing guilty pleas from others. Third, the apparent willingness of the government to consider the collateral consequences (such as debarment from public procurement contracts) of a conviction for a bribery offense when seeking a modified sentence. Fourth, the imposition of significant monetary penalties and disgorgement.

Alliance One International, Inc., et al.

Conduct

- The DOJ entered into a non-prosecution agreement (NPA) with Alliance One International, Inc. (Alliance) while two Alliance subsidiaries pleaded guilty to violating the FCPA. Alliance One International AG (AOIAG), a Swiss corporation, and Alliance One Tobacco Osh LLC (AOI-Kyrgyzstan), a Kyrgyzstan corporation, each pleaded guilty to a three count information charging them with conspiring to violate the FCPA, and substantive violations of the FCPA's antibribery and books and records provisions. The subsidiaries' guilty pleas relate to conduct that occurred by employees and agents of foreign subsidiaries of Dimon Incorporated (Dimon) and Standard Commercial Corporation (Standard), prior to the Dimon-Standard merger that resulted in the formation of Alliance.
- Specifically, the AOIAG charges relate to bribes paid to Thai government officials to secure contracts with the Thailand Tobacco Monopoly (TTM), a Thai government agency, for the sale of tobacco leaf. According to court documents, from 2000 to 2004, Dimon and Standard sold Brazilian-grown tobacco to the TTM. Each of the companies retained sales agents in Thailand, and collaborated through those agents to apportion tobacco sales

to the TTM among themselves, coordinate their sales prices, and pay kickbacks to TTM officials to ensure that each company would share in the Thai tobacco market.

- To secure the TTM sales contracts, each company admitted it paid kickbacks based on the number of kilograms of tobacco sold to the TTM. Dimon paid bribes totaling US$542,590 and Standard paid bribes totaling US$696,160, for a total of US$1,238,750 in bribes paid to the TTM officials during the four years.
- The AOI-Kyrgyzstan charges relate to bribes paid to Kyrgyzstan government officials in connection with its purchase of Kyrgyz tobacco. AOI-Kyrgyzstan admitted that employees of Dimon's Kyrgyz subsidiary, Dimon International Kyrgyzstan (DIK), paid a total of approximately US$3 million in bribes from 1996 to 2004 to various Kyrgyz government officials, including officials of the Tamekisi, a government entity that controlled and regulated the tobacco industry. Also, according to court documents, employees paid bribes totaling US$254,262 to five local provincial government officials, known as "Akims," to obtain permission to purchase tobacco from local growers during the same period. In addition, the employees paid approximately US$82,000 in bribes to officers of the Kyrgyz Tax Police in order to avoid penalties and lengthy tax investigations.
- In the SEC enforcement action, the SEC alleged Alliance violated the FCPA's antibribery, books and records, and internal controls provisions. The SEC's complaint alleged DIK paid more than US$3 million in bribes to Kyrgyzstan government officials to purchase Kyrgyz tobacco for resale to Dimon's customers. DIK also made improper payments to Kyrgyzstan tax officials. Additionally, Dimon made improper payments to tax officials in Greece and Indonesia. Standard also made an improper payment to a political candidate and provided gifts, travel and entertainment expenses to government officials in Asia, including China and Thailand. Dimon and

Standard failed to record these payments accurately in the companies' books and records.

- Bobby J. Elkin, Jr., Baxter J. Myers, Thomas G. Reynolds, and Tommy L. Williams agreed to settle a civil action brought by the SEC. The SEC alleged that the defendants, all former employees of Dimon, violated and aided and abetted violations of the FCPA.
- In addition, Elkin pleaded guilty to a one count criminal information charging him with conspiracy to violate the FCPA.
- According to the SEC's complaint, Elkin, a former country manager for Kyrgyzstan, authorized, directed, and made these bribes in Kyrgyzstan through a DIK "Special Account" held at a bank in his name.
- The bribes, which were sometimes referred to as "financial assistance Kyrgyzstan payments," were to facilitate the purchase and export of Kyrgyz tobacco by DIK for resale to Dimon's customers.
- In respect to the payments made to Tamekisi, the SEC alleged Elkin periodically delivered bags filled with US$100 bills to a high-ranking Tamekisi official and that Elkin paid more than US$2.6 million to a high-ranking Tamekisi official.
- Elkin allegedly authorized and paid more than US$260,000 to the Akims.
- DIK also made improper payments to Kyrgyzstan tax officials. The Kyrgyzstan tax authorities offered to reduce tax penalties levied against DIK in exchange for a cash payment. At that point, Elkin made a cash payment to the tax authorities from the Special Account. The SEC alleged that Elkin paid approximately US$82,850 to Kyrgyzstan tax officials.
- The SEC also alleged that Myers, a former regional finance manager, authorized all fund transfers from a Dimon subsidiary's bank account to the Special Account.

- The SEC's complaint also stated that Reynolds, a former corporate controller, formalized the accounting methodology used to record the cash payments made from the Special Account for the purposes of Dimon's internal reporting.
- The SEC further alleged that Williams, a former senior vice president of sales, directed sales of tobacco from Brazil and Malawi and the payment of the "special expenses," "special commissions," "retainers" or "first time sales commissions" to the TTM through Dimon's agent in Thailand. Williams knew the commissions were excessive and would be transferred by the agent to TTM officials. These bribes were recorded as "commissions."
- In addition to the monetary bribes paid to TTM officials, Williams also arranged for TTM officials to travel from Thailand to Brazil, purportedly to look at tobacco blends and samples. The return portion of the delegation's trip included a one-week stay in Madrid and Rome that was unrelated to the inspection or purchase of tobacco by the TTM.
- In respect to DOJ enforcement action, Elkin admitted that he conspired to violate the FCPA. Specifically, Elkin admitted to conspiring to make corrupt payments totaling more than US$3 million to Kyrgyz government officials from 1996 through 2004 for the purpose of securing business advantages for his employer. Elkin also admitted he made cash payments to officials of the Tamekisi in order to obtain export licenses and to gain access to government-owned tobacco processing facilities. In addition, Elkin admitted he made cash payments to Akims to obtain permission to purchase tobacco from local growers, and to the Kyrgyz Tax Inspection Police to influence their decisions and avoid lengthy tax inspections and penalties.

Penalties

- To resolve the DOJ enforcement actions, AOIAG will pay a criminal fine of US$5.25 million while AOI-Kyrgyzstan agreed to pay a fine of US$4.2 million.

As noted above, Alliance entered into a NPA with the DOJ. Pursuant to the NPA, Alliance will continue to cooperate with the DOJ's ongoing investigation, and to retain an independent compliance monitor for three years to oversee the implementation of an antibribery and anti-corruption compliance program and to report periodically to the DOJ.

- Alliance agreed to pay US$10 million in disgorgement and to retain an independent compliance monitor for three years to settle the SEC's charges.
- To resolve the SEC enforcement action, all four individual defendants consented to the entry of final judgments permanently enjoining each of them from violating the FCPA's antibribery provisions and from aiding and abetting violations of the books and records and internal controls provisions of the FCPA. In addition, Myers and Reynolds also agreed to pay a civil penalty of US$40,000 each.
- Elkin was sentenced to three years probation and a US$5,000 fine. The sentence represents a significant departure from the 38-month prison term the DOJ sought. Notably, the sentencing judge waived the standard travel restrictions that accompany probation to enable Elkin to return to Kyrgyzstan to resume his job with a Turkish tobacco company.

Notes

- These enforcement actions clearly illustrate surviving or newly-formed entities following an acquisition or business combination inherit the FCPA liabilities of its predecessor entities.

Technip S.A.

Conduct

- Technip, a global engineering, construction and services company based in France,[2] agreed to settled DOJ and SEC investigations of the company for its participation in a decade-long scheme to bribe Nigerian government officials to obtain engineering, procurement and construction (EPC) contracts.
- The DOJ filed a two-count information charging Technip with one count of conspiracy and one count of violating the FCPA.
- Technip settled a related civil complaint filed by the SEC charging Technip with violating the FCPA's antibribery, books and records, and internal controls provisions.
- The EPC contracts to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria, were valued at more than US$6 billion.
- The DOJ filed a DPA and a criminal information against Technip. The two count information charges Technip with one count of conspiracy and one count of violating the FCPA.
- Technip, Kellogg Brown & Root Inc. (KBR), and two other companies were part of a four company joint-venture that was awarded four EPC contracts by Nigeria LNG Ltd. (NLNG) between 1995 and 2004 to build LNG facilities on Bonny Island. The government-owned Nigerian National Petroleum Corporation (NNPC) was the largest shareholder of NLNG, owning 49 percent of the company.
- According to court documents, Technip authorized the joint-venture to hire two agents, Jeffrey Tesler and a Japanese trading company, to pay bribes to a range of Nigerian government officials, including top-level executive branch

[2] Technip's American Depository Shares traded on the New York Stock Exchange from 2001 until 2007.

officials, to assist Technip and the joint-venture in obtaining the EPC contracts. At crucial junctures preceding the award of EPC contracts, a senior executive of Technip, KBR's former CEO, Albert "Jack" Stanley, and others, met with successive holders of a top-level office in the executive branch of the Nigerian government to ask the office holders to designate a representative with whom the joint-venture should negotiate bribes to Nigerian government officials. The joint-venture paid approximately US$132 million to a Gibraltar corporation controlled by Tesler and more than US$50 million to the Japanese trading company during the course of the bribery scheme. According to court documents, Technip intended for these payments to be used, in part, for bribes to Nigerian government officials.

Penalties

- To resolve the DOJ investigation, Technip agreed to pay the DOJ a US$240 million criminal penalty and entered into a two year DPA. As part of the DPA, Technip agreed, among other things, to retain an independent compliance monitor for a two year period to review the design and implementation of Technip's compliance program and to cooperate with the DOJ in ongoing investigations.
- As part of Technip's settlement with the SEC, it agreed to pay US$98 million in disgorgement of profits relating to those violations. Technip further agreed to the entry of a court order permanently enjoying it from violating the FCPA.

Notes

- The Technip enforcement action resolution, along with those of Halliburton, KBR, Albert Stanley, Snamprogetti and ENI (see below), have resulted in more than US$1.28 billion in penalties. These penalties are the largest ever to arise out of one investigation. The DOJ and SEC represent their Bonny Island EPC investigations continue.

- US enforcement authorities based jurisdiction for the antibribery and related conspiracy allegations, at least in part, on the use of US correspondent accounts to clear dollar denominated transactions. Because most foreign dollar transactions clear through correspondent accounts, this uncontested theory provides prosecutors a powerful weapon when attempting to hold foreign issuers liable for acts committed while “in” US territory.

Veraz Networks, Inc.

Conduct

- The SEC alleged that Veraz, a San Jose, California-based telecommunications company, violated the FCPA’s books and records and internal controls provisions. From 2007 to 2008, Veraz resellers, consultants and employees made and offered payments to employees of government controlled telecommunications companies in China and Vietnam for the purpose of improperly influencing these foreign officials to award or continue to do business with Veraz.
- Specifically, the SEC alleged that Veraz engaged a consultant in China who in 2007 and 2008 gave gifts, and offered improper payments, together valued at approximately US$40,000, to officials at a government-controlled telecommunications company in China in an attempt to win business for Veraz. A Veraz supervisor who approved the gifts described them in an internal Veraz email as the "gift scheme."
- Similarly in 2007 and 2008, the SEC alleges that a Veraz employee, through a Singapore-based reseller, made or offered improper payments to the CEO of a government-controlled telecommunications company in Vietnam to win business for Veraz. Veraz also approved and reimbursed its employee for questionable expenses, including gifts and entertainment for employees, and flowers for the wife of the CEO of the Vietnamese telecommunications company.

- According to the SEC's complaint, Veraz violated the books and records and internal controls provisions of the FCPA by failing to accurately record the improper payments on its books and records, and failing to devise and maintain a system of effective internal controls to prevent such payments.

Penalties

- Without admitting or denying the allegations in the SEC's complaint, Veraz consented to the entry of a final judgment permanently enjoining Veraz from future violations of the books and records and internal controls provisions.
- Veraz agreed to pay a penalty of US$300,000.

Notes

- Gifts and entertainment provided to employees of state-controlled enterprises and relatives of such employees may give rise to FCPA enforcement actions.

Snamprogetti Netherlands B.V. and ENI, S.p.A.

Conduct

- The DOJ filed a two count criminal information against and entered into a DPA with Snamprogetti to resolve an investigation into the company's alleged role in a conspiracy to bribe Nigerian government officials in order to secure lucrative EPCs at the Bonny Island, Nigeria, LNG fields.
- Specifically, the DOJ charged Snamprogetti with one count of conspiracy and one count of aiding and abetting violations of the FCPA. During the relevant time period, Snamprogetti, a Dutch corporation headquartered in Amsterdam, was a wholly-owned subsidiary of Snamprogetti S.p.A., an Italian company headquartered in Milan.

- In the SEC enforcement action, the SEC charged ENI, an issuer, with violating the books and records and internal controls provisions of the FCPA and Snamprogetti, as an agent of ENI, with violating the FCPA's antibribery provisions and knowingly violating the books and records and internal controls provisions.
- Snamprogetti, KBR, Technip (see above) and an engineering and construction company headquartered in Yokohama, Japan (identified in press reports as JGC Corporation), were part of a four company joint-venture that was awarded four EPC contracts by NLNG, between 1995 and 2004, to build LNG facilities on Bonny Island. The government-owned NNPC was the largest shareholder of NLNG.
- According to court documents, senior executives at Snamprogetti did not do any due diligence on and authorized the joint-venture to hire two agents, Jeffrey Tesler and the Japanese trading company, to pay bribes in excess of US$180 million to a range of Nigerian government officials, including top-level executive branch officials, to assist Snamprogetti and the joint-venture in obtaining the EPC contracts. At crucial junctures preceding the award of EPC contracts, Snamprogetti's co-conspirators met with successive holders of a top-level executive branch office in Nigerian government to ask the office holders to designate a representative with whom the joint-venture should negotiate bribes to Nigerian government officials. Tesler was so designated by the Nigerian government official. The joint-venture paid approximately US$132 million to a Gibraltar corporation controlled by Tesler and more than US$50 million to the Japanese trading company during the course of the bribery scheme. According to court documents, Snamprogetti intended for these payments to be used, in part, for bribes to Nigerian government officials.
- The SEC's complaint alleges that senior sales executives at the joint-venture companies formed a "cultural committee" to consider how to implement and

hide the bribery scheme through sham consulting and service contracts with subcontractors and vendors.

- The SEC's complaint also alleges that ENI failed to ensure that its former subsidiary, Snamprogetti, complied with ENI's internal controls concerning the use of agents, specifically, due diligence requirements for engaging such agents, and that the books and records of both companies were falsified as a result of the bribery scheme. After ENI became a US issuer in 1995, it became subject to the FCPA, including the requirement to create and maintain adequate internal controls.

Penalties

- Snamprogetti agreed to pay a US$240 million criminal penalty and enter into a DPA with the DOJ. Under the terms of the DPA, the DOJ will defer prosecution of Snamprogetti for two years. Snamprogetti, its current parent company, Saipem S.p.A., and its former parent company, ENI, agreed to ensure that their compliance programs satisfied certain standards and to cooperate with the DOJ in ongoing investigations. If Snamprogetti and its current and former parent companies abide by the terms of the DPA, the DOJ will dismiss the criminal information when the agreement expires.
- Snamprogetti and ENI will jointly pay US$125 million to settle the SEC's charges. Snamprogetti also consented to the entry of a court order permanently enjoining it from violating the FCPA; ENI has consented to the entry of a court order permanently enjoining it from violating the books and records and internal controls provisions of the FCPA.

Notes

- The SEC's pleadings illuminated what it considered failures by ENI to oversee Snamprogetti. The SEC noted, for example, ENI's "policies and procedures governed Snamprogetti's use of agents" but "ENI had failed to ensure that Snamprogetti conducted due diligence on agents hired through

the joint-ventures in which Snamprogetti participated." The SEC concludes ENI's internal controls failed to discover the "decades-long bribery scheme." The SEC's pleadings make clear that the government expects joint-venturers to conduct diligence on the agents that the joint-venture retains and that joint-venturers will be held liable for the acts of their agents. In charging Snamprogetti, a wholly-owned subsidiary of ENI, as agent of an issuer, the SEC took an expansive view of agency theory in the context of a parent-subsidiary corporate relationship.

- Messrs. Tesler and Wojceich Chodan, both UK citizens, indicted by a federal grand jury in Houston for their alleged roles in the above described conduct, continue to fight their extradition to the United States.
- JGC stated in its annual report dated March 31, 2010, that it had been contacted by the DOJ regarding the DOJ's "investigation of the TSKJ matter and JGC and DOJ are engaged in discussions about a potential resolution of that investigation relating to JGC."

General Electric Company, et al.

Conduct

- Without admitting or denying liability, General Electric (GE) and two subsidiaries for which GE assumed liability upon acquiring, Ionics Inc. (Ionics) and Amersham plc (Amersham), resolved SEC allegations of having violated the FCPA's books and records and internal controls provisions in relation to payments made under the OFFP.
- The SEC alleged two GE subsidiaries, Marquette-Hellige (Marquette) and OEC-Medical Systems (Europa) AG (OEC), made approximately US$2.04 million in payments in the form of computer equipment, medical supplies and services to the Iraqi Ministry Health Ministry. Prior to GE's acquisition of their parent companies, two other current GE subsidiaries, Ionics Italba S.r.L. (Ionics Italba), then a subsidiary of Ionics, and Nycomed Imaging AS

(Nycomed), then a subsidiary of Amersham, made approximately US$1.55 million in cash payments under the OFFP.

- Marquette, OEC, Ionics Italba and Nycomed, according to the SEC's complaint, each authorized and paid kickbacks to ministries of the government of Iraq through agents in the form of "after sales service fees" (ASSF) on sales of products to Iraq. In total, the subsidiaries working through agents, made ASSF payments of approximately US$3,584,842 and earned profits approximating US$18,397,949 as a result of the payments.
- Specifically, the SEC alleged Marquette paid or agreed to pay US$1,450,000 in bribes in the form of computer equipment, medical supplies, and services on three contracts worth US$8.8 million. Marquette increased the agent's commission by 10 percent of the contract price. The agent then used the extra 10 percent to cover the cost of the bribe.
- The SEC alleged OEC made an in-kind bribe of approximately US$870,000 on a contract worth US$2.1 million through the same agent who handled the Marquette contracts. Like Marquette, OEC increased the agent's commission by 10 percent of the contact price. To conceal the increased commission, OEC and the agent entered into a fictitious "services provider agreement" that purported to identify phony services the agent would perform to justify the increased commission.
- In respect to Nycomed, the SEC's complaint alleged it entered into nine contracts with Iraqi ministries involving cash payments of approximately US$750,000. As a result, Nycomed earned approximately US$5 million in wrongful profits on the contracts. Like OEC and Marquette, Nycomed increased its agent's commission by 10 percent of the contract price to cover the cost of the bribes.
- The SEC alleged Ionics Italba paid US$795,000 in kickbacks and earned US$2.3 million in wrongful profits on five OFFP contracts. The kickbacks were concealed under a fictitious line item ("modification and adaption at site

of obsolete spare parts") or ASSF in the amount of 10 percent of the respective contract's value, which were improperly recorded as commissions and other legitimate business expenses.

Penalties

- GE, as well as Ionics (now GE Ionics Inc.) and Amersham (now GE Healthcare Ltd.), consented to a court order permanently enjoining them from future violations of the FCPA's books and records and internal controls provisions. GE was ordered to disgorge profits of US$18,397,949 and pay US$4,080,665 in prejudgment interest and a penalty of US$1 million.

Notes

- The GE enforcement action illustrates, in the words of Cheryl J. Scarboro, Chief of the SEC's FCPA unit, "corporate acquisitions do not provide the acquirors immunity from FCPA enforcement" when the acquisition targets have violated the FCPA.

Joe Summers

Conduct

- Joe Summers, a former country manager for Pride International, Inc. (Pride), without admitting or denying liability, resolved an enforcement action brought by the SEC.
- The SEC alleged that from approximately 2003 to 2005, Summers authorized or allowed payments totaling approximately US$384,000 to third party companies believing that some or all of the funds would be given to an official of Venezuela's state-owned oil company, Petroleos de Venezuela S.A. (PDVSA), to secure extensions of drilling contracts. The complaint further alleged that Summers authorized the payment of approximately US$30,000 to a third party, believing that some or all of the funds would be

given to a PDVSA employee to obtain the payment of receivables. The SEC's complaint charged Summers with violating, as well as aiding and abetting violations of the antibribery, books and records and internal controls provisions FCPA.

Penalties

- Summers consented to the entry of a permanent injunction and a civil penalty of US$25,000.

Notes

- Pride reportedly discovered the illegal conduct described above during an internal audit of the company's Latin American operations. Pride's Audit Committee retained independent counsel whose investigation continues. In February 2010, Pride announced that it had set aside US$56.2 million in anticipation of a resolution with the DOJ and SEC concerning possible FCPA violations.
- Summers was the second former Pride executive charged by the SEC. The SEC charged Bobby Benton in late 2009. The Benton enforcement action has not yet been resolved.

Universal Corporation and Universal Leaf Tabacos Ltda.

Conduct

- Universal Corporation (Universal) and Universal Leaf Tabacos Ltda. (Universal Brazil) resolved FCPA enforcement actions with the DOJ. In addition, Universal also resolved a related enforcement action with the SEC.
- Universal entered into an NPA with the DOJ. Universal Brazil pleaded guilty to a two count information that charged it with conspiring to violate the antibribery and books and records provisions of the FCPA, and with violating

the antibribery provisions of the FCPA relating to bribes paid to Thailand Tobacco Monopoly (TTM) employees for the sale of Brazilian tobacco.

- Specifically, the DOJ alleged from 2000 to 2004, Universal Brazil sold Brazilian-grown tobacco to the TTM. Universal Brazil admitted to retaining sales agents in Thailand, and collaborating through those agents to apportion tobacco sales to the TTM among two other companies (Dimon Incorporated and Standard Commercial Corporation)[3] themselves, coordinated sales prices and paid kickbacks to TTM officials to ensure that each company would share in the Thai market. Universal Brazil admitted it paid approximately US$697,000 in kickbacks to TTM officials. Universal Brazil falsely characterized the payments in the company's books and records as "commissions" paid to sales agents.
- Universal resolved the SEC enforcement without admitting or denying the SEC's allegations. In addition to the unlawful payments made to TTM officials, the SEC also alleged Universal violated the FCPA's antibribery, books and records, and internal controls provisions in relation to payments made in to foreign officials in Mozambique and Malawi.
- Specifically, the SEC alleged from 2004 through 2007, Universal made payments of more than US$165,000 to officials in the Mozambique government through subsidiaries in Belgium and Africa. The SEC further alleged that Universal made these payments to secure an exclusive right to purchase tobacco from regional growers and to procure legislation favorable to the Universal's business. In addition, between 2002 and 2003, Universal subsidiaries paid a total of US$850,000 to senior Malawian government officials, according to the SEC. Universal did not accurately record these payments in its books and records and failed to implement internal controls sufficient to prevent such payments from being made.

[3] *See Alliance One International, Inc., et al.*, enforcement action summary above for additional discussion regarding Dimon and Standard.

Penalties

- As noted above, Universal and the DOJ entered into an NPA. Pursuant to that NPA and the Universal Brazil plea agreement, Universal and Universal Brazil will retain an independent compliance monitor for a minimum of three years to oversee the implementation of an antibribery and anticorruption compliance program and to report periodically to the DOJ.
- In addition, Universal Brazil will pay a US$4.4 million criminal fine and Universal will disgorge approximately $4.6 million in ill gotten gains to the SEC.

Notes

- The Universal and Universal Brazil enforcement actions illustrate that principals may be held liable for the acts of third party agents.
- These enforcement actions also demonstrate that prompt investigation after receiving notice of a potentially unlawful act and voluntary disclosure may result in lesser penalties from enforcement authorities. Universal learned of the acts of the payments to the TTM officials after an anonymous call was made to the company's hotline. Universal's audit committee then retained outside counsel to investigate prior to disclosing to the DOJ and SEC.

James H. Giffen and Mercator Corporation

Conduct

- Mercator, a New York merchant bank, pleaded guilty to a one count Information that charged a violation of the FCPA's antibribery provisions. Specifically, the DOJ alleged Mercator counseled the Republic of Kazakhstan in connection with various transactions related to the sale of Kazakh oil and gas. Three senior officials in the Kazakh government had authority to substantially influence whether Mercator obtained and retained

lucrative business, to pay Mercator substantial success fees if certain oil transactions closed, as well as to decide whether or not those transactions would close. In an effort to maintain its lucrative position, Mercator caused the purchase of two snowmobiles in November 1999. The snowmobiles were shipped to Kazakhstan for delivery to one of the officials.

- Giffen, Mercator's chairman, pleaded guilty to a one count Information that charged him with failing to disclose control of a Swiss bank account on his income tax return. Giffen filed an individual income tax return in 1997 and failed to report he maintained an interest in, and a signature and other authority over, a bank account in Switzerland in the name of Condor Capital Management, a British Virgin Islands corporation he controlled.
- In 2007 the United States brought a separate, but related civil forfeiture action against approximately US$84 million on deposit in Switzerland. The complaint alleged that the funds were traceable to unlawful payments to senior Kazakh officials in connection with oil and gas transactions arranged by Mercator for Kazakhstan. According to a 2007 agreement between the United States, Switzerland and Kazakhstan, the funds are being used by a non-governmental organization in Kazakhstan to benefit underprivileged Kazakh children.

Penalties

- Mercator was sentenced to pay a US$32,000 criminal fine.
- Giffen was sentenced to time served.

Notes

- In 2003 a grand jury returned an indictment that charged Giffen with one count of conspiring to violate the FCPA, mail and wire fraud statutes, 13 counts of violating the FCPA, eight counts of wire fraud, one count of mail fraud, one count of conspiracy to commit money laundering, 33 counts of

money laundering and three counts of filing false personal income tax returns. The indictment alleged Giffen paid more than US$78 million in unlawful payments to senior officials in the Kazakh government in transactions in which US companies acquired valuable oil and gas rights.

- At trial Giffen raised a public authority defense, asserting he acted based on authority from the US Government including the Central Intelligence Agency. In furtherance of this defense, Giffen moved the trial court to compel discovery of classified material related to his communications with US agencies. The trial court denied the government's attempts to preclude Giffen's public authority defense and the Second Circuit Court of Appeals dismissed the government's appeal for lack of jurisdiction.
- Giffen, like the BAE enforcement matter discussed above, raises questions about the government's ability to prosecute FCPA charges when the defendant or countries implicated in the alleged bribery schemes involve US strategic or national security interests.

Richard T. Bistrong

Conduct

- Bistrong, formerly the vice president of International Sales of the Products Group of a company identified in press reports as Amor Holdings Inc., pleaded guilty to a one count criminal information that charged conspiracy to violate the FCPA's antibribery and books and records provisions, and to export controlled goods without authorization.
- Bistrong admitted that from 2001-2006 he and others used a variety of third parties to make corrupt payments to foreign officials to obtain business for his employer and concealed the payments by falsifying invoices.
- Specifically, from 2001-2006 Bistrong and another Products Group employee paid a third party (the "UN Agent") approximately US$227,750 in "sales

commissions" believing a portion of the money would be provided to a UN procurement officer. The UN procurement officer had provided non-public, confidential bid information to the UN Agent. The UN Agent used the confidential information to assist Bistrong's employer in submitting the lowest priced tenders, which resulted in the award of multiple UN procurement contracts for Bistrong's employer.

- Bistrong also admitted that from 2001-2003 he and a Products Group consultant used another third party (the "Dutch Agent") to pay a City of Rotterdam police officer working on procurement matters for the Netherlands' National Police Services Agency for his assistance in re-writing a tender so that it described a product only produced by Bistrong's employer. The Dutch Agent subsequently issued Bistrong's employer an invoice for "marketing services" that were not performed. Bistrong, the Products Group consultant, and the Dutch Agent all knew the Dutch Agent would pass a portion of the "marketing services" payment to the City of Rotterdam police officer who had re-written the tender.
- Bistrong further admitted that in 2006 he and another Products Group employee discussed the sale of fingerprint ink pads with the Independent Election Commission (INEC) of Nigeria. An INEC official informed the Products Group employee INEC would purchase the pads from Bistrong's employer if a kickback was paid. Bistrong advised the Products Group employee the INEC official should designate a company to receive the kickback, knowing the kickback would be paid to the official. Bistrong subsequently instructed the Products Group employee to pay the kickback to the company the designated by the INEC official.
- Bistrong also admitted from 2001-2006, he and others caused the Products Group to keep off his employer's books and records approximately US$4.4 million in payments to third party intermediaries used by the Products Group to obtain business from foreign government contracts. To conceal the

payments, Bistrong and others submitted two sets of invoices: one went to the foreign governments and the other to the Products Group accounting department. Bistrong submitted "pro forma" invoices to the foreign governments, which included a fee the Products Group would pay to its third party intermediaries. Bistrong also submitted a second "net" invoice to the Products Group accounting department, which did not include the fees charged to the foreign governments to cover the third party payments.

- Finally, Bistrong admitted to conspiring to violate the International Emergency Economic Powers Act (IEEPA) and the Export Administration Regulations (EAR) promulgated thereunder by the Department of Commerce (Commerce). Bistrong conspired to violate the IEEPA and EAR when he and a Products Group colleague agreed to and did in fact export controlled commodities without first obtaining a valid export license from Commerce.

Penalties

- Bistrong has not been sentenced. At sentencing, he faces up a US$250,000 fine or twice the pecuniary gain or loss realized from his illegal acts, five years imprisonment and three years of supervised release.

Notes

- In 2007 BAE Systems acquired Amor Holdings and reportedly disclosed Bistrong's conduct to the DOJ and SEC.
- In late 2009, based in part on the cooperation of "Individual 1" (which the press identified as Bistrong), the United States indicted 22 defendants in the largest sting operation ever carried out in an FCPA context. The majority of the 22 indictees were later arrested at a Las Vegas military and law enforcement trade show.

ABB Ltd, et al.

Conduct

- ABB Ltd, a Swiss corporation that provides power and automation products and services around the world and trades American Depository Receipts on the New York Stock Exchange, and two subsidiaries, ABB Inc. and ABB Ltd – Jordan (ABB Jordan) resolved allegations of FCPA violations.
- ABB Inc., ABB Ltd's US subsidiary, pleaded guilty to one substantive count of violating the FCPA's antibribery provisions and one count of conspiring to violate the FCPA's antibribery provisions. ABB Inc. admitted one of its business units, ABB Network Management (ABB NM), paid bribes from 1997 to 2004 that totaled approximately US$1.9 million to officials at the Comisión Federal de Electricidad (CFE), a Mexican state-owned utility company. ABB Inc. admitted the bribes were paid through various intermediaries including a Mexican company that served as ABB NM's sales representative in Mexico. Fernando Maya Basurto, formerly a principal of the Mexican company, previously pleaded guilty to a one count information for his role in the ABB Inc. conspiracy.
- ABB Ltd entered into a DPA and agreed to the filing of a one count criminal information charging ABB Jordan with conspiracy to commit wire fraud and violate the FCPA's books and records provisions. ABB Ltd admitted ABB Jordan made payments to former Iraqi government officials in connection with contracts to sell vehicles to Iraq under the OFFP. From 2000 to 2004 ABB Jordan paid or caused to be paid more than US$300,000 to former Iraqi officials to secure contracts with regional companies of the Iraqi Electricity Commission, an Iraqi governmental agency.
- The SEC's allegations largely mirrored the conduct described above in the DOJ enforcement actions. In respect to ABB Inc. and ABB NM, the SEC specifically alleged ABB Ltd failed to conduct due diligence on ABB NM's

agent and Mexican companies used to bribe Mexican officials. In respect to the OFFP kickback scheme, the SEC alleged ABB Jordan acted as a conduit for ABB subsidiaries and made kickback payments on their behalf. Examples of the alleged payments included check and wire transfers to foreign officials' relatives, cash to foreign officials, payment of a cruise for foreign officials and their spouses, and bank guarantees. According to the SEC, the bribes were improperly recorded as "commissions" and "service fees" on ABB Ltd's books and records and ABB Ltd lacked adequate internal controls to prevent and detect such payments.

Penalties

- All totaled, ABB Ltd and its subsidiaries will pay more than US$58 million in criminal and civil penalties, disgorgement and interest.
- ABB Ltd and the DOJ entered into a three year DPA. The DPA requires ABB Ltd to cooperate fully with US and foreign authorities, to follow a set of enhanced compliance and reporting obligations, and the recommendations of an independent compliance consultant. Pursuant to the DPA, ABB Jordan agreed to pay a criminal fine of US$1.9 million.
- ABB Inc. agreed to pay a US$17.1 million criminal fine.
- Without admitting or denying the SEC's allegations, ABB Ltd consented to the entry of a final judgment that permanently enjoins ABB Ltd from future FCPA violations, orders the company to pay US$22,804,262 in disgorgement and prejudgment interest, a US$16,510,000 civil penalty, and requires the company to comply with certain undertakings of a FCPA compliance program.

Notes

- In November 2009 Basurto pleaded guilty to a one count information charging him for his role in the ABB Inc. conspiracy. Basurto's sentencing

date has not been set. He faces a maximum of five years imprisonment, a fine of US$250,000 or twice the gain or loss realized from the illegal conduct, and three years supervised release. As part of his plea agreement, Basurto agreed to forfeit more than US$2 million in proceeds from the conspiracy.

- Also in November 2009 a federal grand jury returned an 18-count indictment charging John J. O'Shea, the former general manager of ABB NM, with conspiracy, money laundering, FCPA violations and falsification of records related to his role in the bribery scheme. The indictment also included a notice of forfeiture of nearly US$3 million. O'Shea's trial date has not been set.

Panalpina *et al.*

Conduct

- Thirteen entities, including Panalpina World Transport (Holding) Ltd. (Panalpina Ltd.), Pride International Inc. (Pride International), Tidewater Inc., Transocean Inc., Royal Dutch Shell plc (Shell), and subsidiaries thereof, as well as Global SantaFe Corporation (Global SantaFe) and Noble Corporation (Noble), resolved allegations of FCPA violations brought by the DOJ and or SEC.
- Panalpina Ltd. and Panalpina Inc.:
  - The DOJ charged Panalpina Ltd. with conspiracy to violate and substantive violations of the FCPA's antibribery provisions. The DOJ also charged Panalpina Inc., a US subsidiary of Panalpina Ltd. (collectively "Panalpina"), with conspiracy to violate and aiding and abetting certain customers with violating the FCPA's books and records provisions. The SEC charged Panalpina Inc. with violating and aiding and abetting violations of the FCPA's antibribery provisions as well as violating the books and records and internal controls provisions.

- Panalpina Ltd. and Panalpina Inc. admitted they, through subsidiaries and affiliates, engaged in a scheme to pay bribes to numerous foreign officials on behalf of many of its customers in the oil and gas industry. They did so in order to bypass local rules and regulations relating to the import of goods and materials into numerous foreign jurisdictions. The companies admitted between 2002 and 2007 they paid thousands of bribes to foreign officials in at least seven countries, including Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia and Turkmenistan. The bribes were often authorized by Panalpina's customers and then inaccurately described in customer invoices as “local processing,” “special intervention” or “special handling” fees.

➢ Pride International and Pride Forasol S.A.S. (Pride SAS):

- The DOJ charged Pride International with conspiracy to violate and substantive violations of the FCPA’s antibribery and books and records provisions. The DOJ further charged Pride SAS, a wholly owned subsidiary of Pride International, with conspiracy to violate and substantive violations of the FCPA’s antibribery provisions, and aiding and abetting violations of the books and records provisions. The SEC charged Pride International with violating the FCPA’s antibribery, books and records and internal controls provisions.

- The DOJ and SEC alleged Pride International and Pride SAS, collectively, paid bribes to government officials in Venezuela, India and Mexico. The bribes were paid to extend drilling contracts for rigs operating offshore in Venezuela, to secure favorable administrative judicial decisions relating to a customs dispute for a rig imported into India, and to avoid payment of customs duties and penalties relating to a rig and equipment in Mexico. The SEC further alleged that Pride International subsidiaries operating in

Mexico, Kazakhstan, Nigeria, Saudi Arabia, the Republic of Congo and Libya made numerous improper payments which were not properly recorded in those subsidiaries' books and records. Pride International failed to keep accurate books and records and failed to devise and maintain an adequate system of internal controls.

- Tidewater Inc. and Tidewater Marine International Inc. (Tidewater Marine):
  - The DOJ alleged Tidewater Marine, a subsidiary of Tidewater Inc., conspired to violate the FCPA's antibribery and books and records provisions, and substantively violated the books and records provisions. The SEC alleged Tidewater Inc. violated the FCPA's antibribery, books and records and internal controls provisions.
  - The charges filed against Tidewater Marine by the DOJ and against Tidewater Inc. by the SEC related to approximately US$160,000 in bribes paid by employees and agents to tax inspectors in Azerbaijan to improperly secure favorable tax assessments and approximately US$1.6 million in bribes paid through Panalpina to Nigerian customs officials to induce the officials to disregard customs regulations relating to the importation of vessels into Nigerian waters.
- Transocean Inc. and Transocean Ltd.:
  - The DOJ charged Transocean Inc., a Cayman Islands subsidiary of Transocean Ltd., with conspiracy to violate the FCPA's antibribery and books and records provisions, substantively violating the antibribery provisions, and aiding and abetting violations of the books and records provisions. The SEC alleged Transocean Inc. violated the FCPA's antibribery, books and records, and internal controls provisions.

- The DOJ alleged Transocean Inc.'s freight forwarding agents paid approximately US$90,000 in bribes to Nigerian Customs Service (NCS) officials to circumvent Nigerian customs regulations regarding the import of goods, materials, and oil rigs into Nigerian waters. The SEC alleged, for example, Transocean Inc., paid NCS officials, through its customs agents, to extend temporary importation permits (TIPs), obtain false paperwork related to its drilling rigs, and receive clearance authorizations for its rigs. In addition, Transocean Inc. made payments through Panalpina Ltd.'s express courier service, Pancourier, to Nigerian officials to expedite the import of various goods, equipment, and materials into Nigeria. In respect to the Pancourier imported goods, applicable customs duties were not paid. Pancourier, rather, invoiced Transocean Inc. for "local processing charges," which typically constituted 25-40 percent of the actual duties owed.

➢ Global SantaFe:

- The SEC alleged Global SantaFe violated the FCPA's antibribery, books and records, and internal controls provisions. Specifically, the SEC alleged Global SantaFe, prior to its merger with Transocean Inc. (discussed above), through customs brokers, made illegal payments to NCS officials to secure documentation indicating its rigs had left Nigerian waters when TIPs expired. In fact, the rigs did not move. The SEC further alleged that Global SantaFe, through its customs brokers, made other suspicious payments, characterized as "interventions" to NCS officials, or "customs vacations," "customs escort," "costs extra police to obtain visa," "official dues" and "authorities fees" to officials in Gabon, Angola, or Equatorial Guinea. None of the payments were accurately reflected in Global SantaFe's books and records and Global SantaFe did not maintain

an adequate system of internal controls to detect and prevent these payments, according to the SEC.

- Noble:
  - The DOJ agreed not to prosecute Noble. The SEC alleged Noble violated the FCPA's antibribery, books and records, and internal controls provisions.
  - Public documents indicate Noble paid approximately US$74,000 to a Nigerian freight forwarding agent and acknowledged certain employees knew some of payments would be provided to NCS officials as bribes. The bribes were to induce NCS officials to grant TIPs and TIP extensions for Noble drilling rigs. Noble also used agents to submit false documentation to NCS officials to fabricate the export and re-import of drilling rigs when in fact the rigs never left Nigeria. Noble falsely recorded the agents' payments as legitimate expenses. Noble also failed to maintain internal controls to detect and prevent these payments.
- Shell, Shell Nigeria Exploration and Production Company Ltd. (SNEPCO), and Shell International Exploration and Production Inc. (SIEP):
  - The DOJ alleged SNEPCO conspired to violate the FCPA's antibribery and books and records provisions, and aided and abetted violations of the books and records provisions. The SNEPCO charges related to approximately US$2 million SNEPCO allegedly paid to its subcontractors with the knowledge that some or all of this money would be paid as bribes to NCS officials by a Panalpina entity to import materials and equipment into Nigeria.
  - The SEC obtained a cease and desist order that found Shell violated the books and records and internal controls, and SIEP violated the antibribery

provisions of the FCPA by using a customs broker to make payments from 2002 to 2005 to officials at NCS to obtain preferential customs treatment related to a project in Nigeria.

Penalties

- In total, the above Panalpina *et al.* defendants will pay more than US$236.5 million in criminal penalties, civil fines, disgorged profits and prejudgment interest.
- Several entities, including Panalpina Ltd., Pride International, Tidewater Inc. and Tidewater Marine, Transocean Inc. and Transocean Ltd., Shell and SNEPCO, entered into DPAs with the DOJ. One entity, Noble, entered into a NPA with the DOJ.
- Panalpina Inc. and Pride SAS entered guilty pleas to the charges discussed above.
- In terms of criminal penalties, Panalpina Ltd. and Panalpina Inc., combined, will pay more than US$70.5 million; Pride International and Pride SAS, combined, will pay more than US$32 million; Transocean Inc. will pay approximately US$13.4 million; Noble will pay approximately US$2.6 million; SNEPCO will pay approximately US$30 million; and Tidewater Marine will pay approximately US$7.4 million.
- In terms of civil fines, Panalpina Inc. will pay approximately US$11.3 million; Pride International will disgorge profits and pay prejudgment interest in excess of US$23 million; Tidewater Inc. will disgorge profits, pay prejudgment interest and a civil penalty totaling more than US$8 million; Transocean Inc. will disgorge profits and pay prejudgment interest totaling approximately US$7.3 million; Global SantaFe will disgorge profits, pay prejudgment interest and a civil penalty totaling approximately US$5.9 million; Noble will disgorge profits and pay prejudgment interesting in excess of US$5.6 million; and Shell and SIEP will disgorge more than US$18 million.

Notes

- The Panalpina *et al.* enforcement actions initially arose out of the government's FCPA investigation of Vetco Gray UK Limited (Vetco Gray). Vetco Gray, in the course of negotiating a resolution to its own enforcement action, reportedly informed US authorities it was a Panalpina customer. The investigation quickly spread to encompass Panalpina and (at least) the 13 entities discussed above. Reportedly, the 13 entities' enforcement actions, represent only a fraction of the total pending Panalpina-related enforcement actions.
- The Panalpina et al enforcement actions once again highlight the need to conduct due diligence on third parties, such as freight forwarders and customs clearance agents, when they interact with foreign government officials.
- It also bears noting that many of the criminal Panalpina *et al.* enforcement actions were resolved by way of a DPA or, in the case of Noble, a NPA, and that none of these agreements included the requirement for an outside monitor. These agreements may reflect the DOJ's continued emphasis on and possible reward for cooperation and remediation. Indeed, the DOJ and SEC specifically commended the Panalpina et al defendants for their cooperation and remediation efforts. While the monetary penalties are significant and may cause companies to consider the advantages and disadvantages of self-disclosing, such concerns may be balanced by enforcement authorities' willingness to enter into DPAs and NPAs, particularly when the agreements do not require compliance monitors.

Wojceich Chodan

Conduct

- Chodan, a former vice president and consultant to a UK subsidiary of Kellogg, Brown & Root Inc. (KBR Inc.) was extradited from the UK and pleaded guilty to conspiring to violate the FCPA. According to the plea agreement, Chodan was intimately involved in a decade-long conspiracy to bribe Nigerian government officials in order to obtain and retain engineering, procurement and construction (EPC) contracts for Bonny Island, Nigeria, liquefied natural gas (LNG) projects. KBR Inc., Technip, Snamprogetti and an unnamed Japanese company formed a joint-venture that was awarded EPC contracts by Nigeria LNG Ltd. to build LNG facilities on Bonny Island. Chodan admitted he and his co-conspirators agreed to pay bribes to senior Nigerian government officials to obtain and retain the EPC contracts. Chodan further admitted he recommended and agreed to the joint-venture's hiring of two agents, Jeffrey Tesler and the Japanese company, to pay the bribes. Over the course of the scheme, approximately US$182 million in bribes were paid. At crucial junctures during the scheme, Chodan and others met with senior Nigerian government officials so the officials could designate individuals with whom the joint-venture should negotiate bribes.

Penalties

- Sentencing is currently scheduled for February 22, 2011. At sentencing Chodan faces a maximum of five years in prison, a criminal fine of US$250,000 or twice the gain or loss realized from the illegal conduct, and three years of supervised release.
- Chodan agreed, in his plea agreement, to forfeit US$726,885 from frozen Swiss accounts.

Notes

- The Chodan guilty plea is another in a long line of Bonny Island enforcement actions. In 2010 Technip and Snamprogetti each resolved enforcement actions arising out of their role in the Bonny Island scheme. In 2009 the Halliburton Company, Kellogg Brown and Root LLC, and KBR Inc all resolved FCPA enforcement actions arising out their roles in the Bonny Island conspiracy. In 2008 a former executive, Albert "Jack" Stanley, pleaded guilty to conspiring to violate the FCPA for his role in the Bonny Island scheme. Jeffrey Tesler, a British citizen, is fighting extradition from the UK to the United States, where he has been indicted for his role in the projects.

RAE Systems Inc.

Conduct

- RAE, a publicly-traded US corporation, resolved FCPA enforcement actions brought by the DOJ and SEC, arising out of illegal payments made to Chinese government officials by employees of RAE joint-ventures.
- In the NPA, the DOJ alleged and RAE admitted it knowingly violated the FCPA's books and records and internal controls provisions. The SEC, for its part, alleged RAE violated the antibribery, books and records and internal controls provisions of the FCPA.
- According to public documents, RAE developed and manufactured chemical and radiation detection monitors and networks. From 2005 to 2008 RAE had significant operations in the China, and sold its products and services primarily through two subsidiaries organized as joint-ventures with local Chinese entities: RAE-KLH (Beijing) Co. Limited (RAE-KLH) and RAE Coal Mine Safety Instruments (Fushun) Co. Ltd. (RAE Fushun). A significant number of RAE-KLH's and RAE Fushun's customers were Chinese government entities and state-owned instrumentalities, including regional fire

departments, emergency response departments and entities under the supervision of the provincial environmental agency.

- According to the NPA, as a result of due diligence conducted by RAE before acquiring the majority of the joint-venture that became known as RAE-KLH, RAE was aware of "under table greasing to get deals" by employees. Notwithstanding such knowledge, RAE chose to implement internal controls only "halfway" so as not to "choke the sales engine and cause a distraction for the sales guys." As a result, improper payments, including a notebook computer given to the son of a foreign official, money and entertainment, continued at RAE-KLH.
- In acquiring the majority of RAE Fushun, RAE did not conduct any pre-acquisition anticorruption due diligence in spite of a number of red flags. It was later confirmed that corrupt benefits to foreign officials, including gifts of jade, fur coats, kitchen appliances, business suits, and high-priced liquor, entertainment and payments, were being provided by RAE Fushun.
- The NPA and SEC's complaint alleged RAE KLH and RAE Fushun sales personnel typically made the improper payments by obtaining cash from RAE KLH and RAE Fushun accounting personnel. RAE did not impose sufficient internal controls or make any meaningful changes to the practice of sales personnel obtaining cash advances to make the improper payments. In addition, the expenses associated with these cash advances were improperly recorded on the books of RAE-KLH and RAE-Fushun as "business fees" or "travel and entertainment" expenses.
- The SEC and DOJ alleged RAE learned of corrupt practices at RAE-KLH and RAE Fushun and knowingly failed to implement effective systems of internal controls and failed to properly classify the improper payments in its books and records.

Penalties

- RAE entered into a three year NPA with the DOJ. Pursuant to the NPA, RAE will pay a criminal fine of US$1.7 million. The NPA also requires RAE to follow a set of enhanced corporate compliance and reporting obligations, and to submit periodic reports to the DOJ regarding its compliance with its obligations under the agreement.
- To resolve the SEC enforcement action, RAE consented to the entry of a permanent injunction against FCPA violations and agreed to pay US$1,147,800 in disgorgement and US$109,212 in prejudgment interest.

Notes

- The RAE enforcement actions highlight the need to conduct pre-acquisition anticorruption due diligence of prospective joint-venture partners and, if red flags appear and the acquisition is completed, prompt and meaningful remediation undertaken.
- The relatively modest agreed upon penalties and NPA suggest potential benefits of voluntarily disclosure. The DOJ, in the NPA and press release, specifically acknowledged RAE's timely, voluntary and complete disclosure of relevant facts, real-time cooperation, extensive remediation, and commitment to provide periodic repots to the DOJ.

Alcatel-Lucent S.A., et al.

Conduct

- Alcatel-Lucent S.A. (Alcatel-Lucent), and several subsidiaries, resolved DOJ and SEC investigations into the worldwide business practices of Alcatel S.A. (Alcatel) and its subsidiaries that occurred prior to Alcatel's 2006 merger with Lucent Technologies Inc. The DOJ filed a criminal information alleging Alcatel-Lucent violated the books and records and internal controls

provisions of the FCPA. The SEC's complaint alleged Alcatel-Lucent violated the FCPA's antibribery, books and records, and internal controls provision. Both agencies' enforcement actions related to the hiring and conduct of third party agents in several countries. The DOJ also filed a one count criminal information charging Alcatel-Lucent France S.A., (f/k/a Alcatel CIT S.A.) (Alcatel CIT), Alcatel-Lucent Trade International, A.G. (f/k/a Alcatel Standard A.G.) (Alcatel Standard), and Alcatel Centroamerica (f/k/a Alcatel de Costa Rica S.A.) (Alcatel Costa Rica) with conspiring to violate the FCPA's antibribery, books and records, and internal controls provisions.

- Allegedly, the three subsidiaries paid millions of dollars in bribes to foreign officials in Costa Rica, Honduras, Malaysia and Taiwan to obtain, retain or secure improper advantages in violation of the FCPA. Examples of the alleged conduct included:
  - Alcatel CIT wiring more than US$18 million to two consultants in Costa Rica which had been retained by Alcatel Standard. The consultants gave more than half of these monies to various Costa Rican officials for assisting Alcatel CIT and Alcatel Costa Rica with obtaining and retaining business. Senior Alcatel executives approved the consultants' retention and payments despite the obvious indications the consultants were performing little or no legitimate services.
  - Alcatel Standard retaining a Honduran man who had no telecommunications industry experience. The man was retained after being personally selected by the brother of a senior Honduran government official. Alcatel CIT executives knew a significant portion of the money paid to this individual would be shared with the family of the senior Honduran government official to secure favorable treatment for Alcatel CIT.

- Alcatel Standard retaining two consultants with close ties to legislators in the Taiwanese government on behalf of Alcatel SEL A.G. (Alcatel SEL) (now known as Alcatel-Lucent Deutschland) to assist in re-drafting a public tender's technical requirements to improve Alcatel SEL's chances of winning and secure support for its bid. The consultants were paid nearly US$1 million despite neither having any industry experience.

- Alcatel Network Systems Malaysia Sdn. Bhd. (Alcatel Malaysia) making illegal payments to Malaysian government officials to secure non-public, confidential information relating to a public tender that Alcatel Malaysia ultimately won.

➢ Alcatel failed to maintain accurate books and records when the payments (described above) were recorded in ways that obscured their purpose and ultimate recipients. None of the payments were properly documented or recorded in the books and records of Alcatel's subsidiaries, which rolled into Alcatel's books and records. For example:

- Alcatel subsidiaries made payments pursuant to consulting agreements that inaccurately described the services provided.

- Alcatel subsidiaries created false invoices to justify payments.

- Alcatel distributed funds in cash without accurate documentation.

- Alcatel recorded illegal payments as payments for legitimate services.

- Alcatel subsidiaries entered into consulting agreements retroactively.

- Alcatel established and used a system of intermediaries to obscure the source and destination of funds.

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- Alcatel knowingly failed to establish or maintain an adequate system of internal controls to prevent or detect such payments. For example:
  - Alcatel failed to detect or investigate several red flags that suggested third parties, at the direction of certain Alcatel employees, were likely bribing foreign officials. The heads of several Alcatel subsidiaries and geographical regions, some of which reported directly to Alcatel's executive committee, authorized extremely high commission payments under circumstances in which they failed to determine whether such payments were, in part, to be funneled to foreign officials. These Alcatel officials either knew or were extremely reckless in not knowing such conduct occurred.
  - In many instances, personnel whose responsibility it was to review due diligence reports concerning prospective third parties did not have the skills necessary to do so (e.g., they could not read the language in which the reports were prepared).
  - Alcatel employees also entered into agreements retroactively and obscured amounts paid to third parties by splitting the payments among separate agreements.
  - Alcatel Standard's due diligence on third parties was "inadequate" and Alcatel CIT often paid third parties without proof of services rendered.
  - A former high-level employee and the president of Alcatel Standard trained country senior officials how to "paper" third party agreements so Alcatel-Standard would authorize them.

Penalties

- Alcatel-Lucent agreed to pay more than US$137 million in penalties, fines, disgorged profits and prejudgment interest, and enter into enhanced compliance agreements with US enforcement authorities to resolve their respective investigations.
- To resolve the DOJ action, Alcatel-Lucent entered into a DPA with the DOJ while Alcatel-Lucent France, Alcatel-Lucent Trade, and Alcatel-Lucent Costa Rica agreed to plead guilty to the criminal information's charge. The corporate parent and three subsidiaries will pay a US$92 million criminal penalty and implement rigorous compliance enhancements pursuant to their respective DPA and guilty pleas. Pursuant to the DPA, the DOJ will dismiss the Alcatel-Lucent criminal information if it complies with the DPA.
- To resolve the SEC action, Alcatel-Lucent agreed to disgorge more than US$45 million in ill gotten gains and prejudgment interest.
- Alcatel-Lucent further agreed with the DOJ and SEC to retain an independent compliance monitor for three years to oversee the implementation and maintenance of an enhance FCPA compliance program and to submit yearly reports to the DOJ and SEC.
- Previously, in January 2010, Alcatel agreed to pay a US$10 million penalty to resolve an investigation by Costa Rican authorities into the Costa Rican bribery scheme.

Notes

- In March 2007 the DOJ charged Christian Sapsizian, a French citizen and former Alcatel CIT executive, and Edgar Valverde Acosta, a Costa Rican citizen and former president of Alcatel Costa Rica, with a litany of FCPA-related violations concerning the conduct described above. Sapsizian

pleaded guilty and was sentenced. Valverde Acosta is considered fugitive and his whereabouts unknown.

- In public documents the DOJ noted after Alcatel and Lucent merged Alcatel-Lucent substantially improved its cooperation with the DOJ. The DOJ commended Alcatel-Lucent with deciding "on its own initiative and at a substantial financial cost," with "making an unprecedented pledge to stop using third party sales and marketing agents in its worldwide business." These significant changes to Alcatel-Lucent's behavior and business practices may have contributed to the parent company being offered a DPA, notwithstanding the egregiousness of the pre-merger conduct.
- The Alcatel-Lucent *et al.* enforcement actions demonstrate that failing to conduct adequate anticorruption due diligent pre-merger, may result in significant successor liability for the post-merger entity. Public documents indicate Alcatel used Alcatel Standard to conduct "very limited due diligence on business consultants." Upon obtaining the necessary approvals, based on the "due diligence," Alcatel Standard entered into an agreement with the third party usually requiring the third party to perform "vaguely-described marketing services."
- The Alcatel-Lucent *et al.* enforcement actions also demonstrate the need to conduct adequate due diligence prior to retaining third parties as their actions (and liabilities for their actions) may be imputed to the corporate entity that retained them.
- Finally, the Alcatel-Lucent *et al.* enforcement actions demonstrate the US enforcement authorities' continued collaborative efforts. Both the DOJ and SEC acknowledged the assistance provided by Costa Rican and France authorities, in addition to that of a variety of US law enforcement agencies. French authorities, reportedly, continue to investigate the matter.