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The Expanding Role of Deferred And Nonprosecution Agreements: The New Normal for Handling Corporate Misconduct



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The Department of Justice has long had discretion to prosecute corporations due to broad federal vicarious liability laws, which can hold a company criminally responsible for the act of a single employee. Historically, however, DOJ did so relatively infrequently. That changed over the past decade as DOJ began to vigorously pursue corporate entities. Rather than indicting a company and securing a conviction in the courtroom, DOJ has resolved the majority of corporate misconduct allegations via deferred prosecution agreements (DPAs) or nonprosecution agreement (NPAs),[1] whereby DOJ declines to prosecute a company in ex-

[1] ''[A] deferred prosecution agreement is typically predicated upon the filing of a formal charging document by the government, and the agreement is filed with the appropriate court. In the nonprosecution agreement context, formal charges are not filed and the agreement is maintained by the parties rather than being filed with a court.'' Memorandum from Craig S. Morford, Acting Deputy Attorney General, to Heads of Department Components and United States Attorneys, Selection and Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corpora-

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change for the company typically agreeing to pay a large fine and occasionally accepting significant corporate reforms. In the past decade, the use of these agreements has evolved rapidly to the point that they are now the primary tool in DOJ's efforts to combat corporate crime.[2]

Remedial Potential. DOJ's increased use of DPAs and NPAs is based on the agreements' perceived potential to remedy and reform corporate misconduct, while avoiding some of the collateral consequences that often accompany traditional corporate prosecutions. These consequences can include a suspension from participation in government contracting or health care programs and limitations on licensure requirements—consequences that can have a devastating impact on the fundamental operations of a business, thereby harming innocent employees and shareholders.

The federal government's increased focus on corporate crime and use of DPAs and NPAs continues unabated. In the wake of the Bernard Madoff fraud case—the largest investor fraud in U.S. history—the White House and DOJ have renewed their focus on fighting corporate fraud and white collar crime. In November 2009, President Obama issued an Executive Order establishing the interagency Financial Fraud Enforcement Task Force, to be led by DOJ.[3] In addition, the federal budget for 2010 ''represent[ed] the largest-ever, single-year enhancement to support and expand the Justice Department's financial fraud programs.''[4] President Obama's 2011 budget continued this expansion, as it requested a 23 percent increase over the already elevated 2010 budget for economic fraud enforcement.[5] Also in 2010, DOJ ramped up its enforcement efforts by ''adding a number of attorneys to the Fraud Section—lawyers who will be deployed immediately to prosecute crimes like securities fraud, health care fraud, and foreign bribery under the Foreign Corrupt Practices Act.''[6]

Additionally, although DPAs and NPAs have traditionally been the exclusive domain of federal criminal prosecutors, on Jan. 13, 2010, the Securities and Exchange Commission unveiled a new cooperation initiative, which included the use of DPAs and NPAs in resolving enforcement actions against individuals and corporate entities.[7] In December, the SEC announced its first agreement with a corporation under the new initiative.

Section I of this article explores the expansion of DPAs and NPAs, with a focus on Foreign Corrupt Practices Act enforcement. Section II discusses the evolving nature and use of DPAs and NPAs by DOJ. This section outlines the criticisms DOJ has faced with regard to these agreements and how DOJ has responded to this increased scrutiny, including its attempts to make more transparent when these agreements should be used in place of a traditional prosecution. Finally, Section III offers further analysis into the SEC's decision to expand the use of DPAs and NPAs to its enforcement actions against individuals and corporate entities.

I. Expansion of DPAs, NPAs

There is no denying the increase in the use of DPAs and NPAs in recent years. For context, from 2000 to 2004, the average number of agreements was just over four per year. In contrast, during the next five years, the average number of DPAs and NPAs increased more than six-fold to an average of more than 26 agreements per year. In 2010, DOJ entered 32 DPAs and NPAs,[8] which marks a significant increase from 2009, when DOJ entered into 21 agreements, and from 2008, when it entered into 19 agreements.[9] The appendix contains

tions n.2 (March 7, 2008), available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/crm00163.htm.

[2] Throughout this update, the term ''agreements'' will be used to refer to DPAs and NPAs collectively. This update addresses only corporate DPAs and NPAs entered by the Securities and Exchange Commission and DOJ. State and local enforcement agencies frequently enter DPAs and NPAs as well, but those agreements are not discussed in this update.

[3] Exec. Order No. 13519, 74 Fed. Reg. 60123, Establishment of the Financial Fraud Enforcement Task Force (Nov. 17, 2009) (4 WCR 835, 11/20/09).

[4] Eric Holder, Attorney General, Address to the Forum Club of the Palm Beaches (Jan. 8, 2010), available at http://www.justice.gov/ag/speeches/2010/ag-speech-100108.html.

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[5] *See* 5 WCR 115, and DOJ press release, *Department of Justice FY 2011 Budget Request* (Feb. 1, 2010), available at http://www.justice.gov/opa/pr/2010/February/10-ag-109.html.

[6] Lanny Breuer, assistant attorney general, address to *Compliance Week* 2010—5th Annual Conference for Corporate Financial, Legal, Risk, Audit & Compliance Officers (May 26, 2010), available at http://www.justice.gov/criminal/pr/speeches-testimony/2010/05-26-10aag-compliance-week-speech.pdf.

[7] 5 WCR 151, 2/26/10.

[8] During 2010, DOJ entered two additional DPAs that were not approved by a court during the year. In December, it was reported that Alcatel-Lucent entered a DPA with DOJ's Fraud Section to resolve FCPA allegations (5 WCR 925, 12/31/10). That agreement is expected to be submitted to the court for approval early this year. Also in December, it was reported that BL Trading LLC entered a DPA with the U.S. Attorney's Office for the District of Massachusetts to resolve allegations of purchasing stolen property. That DPA has not yet been submitted to the court for approval.

[9] These agreements were identified through a thorough review of press releases, court filings, and other DOJ announcements. Because NPAs are not filed with a court and some agreements are not made public, these numbers cannot be verified with absolute precision.

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a chart listing and summarizing the agreements that DOJ and the SEC entered into during 2010.

Increased FCPA Enforcement. In November, Assistant Attorney General Lanny Breuer announced a ''new era of FCPA enforcement'' at the 24th National Conference on the FCPA.[10] He explained that DOJ's ''FCPA enforcement is stronger than it's ever been—and getting stronger.''[11] FCPA violations represented almost 50 percent of the agreements entered in 2010 and have consistently represented a large portion of the DPAs and NPAs over the past several years.

It should come as no surprise that, as DOJ has increased its enforcement efforts under the FCPA, there has been a corresponding increase in the number of agreements to resolve potential FCPA prosecutions. Breuer also noted that ''in the past year, [DOJ has] imposed the most criminal penalties in FCPA-related cases in any single 12-month period—ever.''[12] Indeed, eight out of the 10 largest fines imposed for FCPA violations occurred during 2010. Breuer stressed that this ''new era'' of FCPA enforcement is ''here to stay.''[13] That means DPAs and NPAs to resolve FCPA allegations are probably ''here to stay'' as well.

II. Evolution of DOJ's Use of DPAs and NPAs

As the use of DPAs and NPAs proliferated in recent years, DOJ faced several criticisms with regard to the use and administration of these agreements. Recently, DOJ has taken several steps to demonstrate, not only that it is listening to these criticisms, but also that it is willing to make changes in an attempt to address some of the most pressing concerns and ensure that these agreements remain an integral part of its arsenal to combat alleged corporate misconduct.

Criticisms Regarding Use of Corporate Monitors. DOJ's use of corporate monitors has faced heavy scrutiny over the past several years, and 2010 was no exception. In March, Judge Ellen S. Huvelle, of the U.S. District Court for the District of Columbia, initially refused to approve DOJ's agreement with Innospec.[14] Instead, she questioned who the monitor would be and explained that she had ''an obligation to the public to find out'' how the monitorship would ''work.''[15] Huvelle further stated that ''it's an outrage, that people get $50 million to be a monitor.''[16]

But despite criticism and increased scrutiny, monitors still appear to play an important and prevalent role in DOJ corporate compliance actions. Of the 32 agreements entered during 2010, 10—almost one-third of the agreements—contained a monitor requirement.

Although DOJ previously attempted to address concerns regarding its use of monitors, most notably by issuing the Morford Memorandum in 2008, in 2010 the department continued to add clarity about the use of monitors in DPA and NPA agreements. Acting Deputy Attorney General Gary G. Grindler released a memorandum May 25 providing ''Additional Guidance on the Use of Monitors in Deferred Prosecution Agreements and Non-Prosecution Agreements with Corporations.''[17] This guidance added a ''tenth basic principle to guide prosecutors in drafting agreements'' to the Morford Memorandum.[18] This additional principle directed that ''[a]n agreement should explain what role the Department could play in resolving disputes that may arise between the monitor and the corporation, given the facts and circumstances of the case.''[19] This addition to the U.S. Attorney's Manual is one example of DOJ responding to criticisms and its attempts to reform the process.

Another example is the recent use of self-monitoring arrangements. In several 2010 agreements, federal prosecutors opted against an independent monitor and instead implemented a ''Corporate Compliance Reporting'' requirement.[20] Under this arrangement, a corporation is required to provide DOJ with an initial report and annual written follow-up reports regarding their remediation and implementation of the revised corporate compliance program for the term of the agreement. The precise considerations for imposing this requirement have not been explicitly outlined by DOJ. However, it is possible that this method of ensuring compliance will be used as a means of enticing companies to self-disclose alleged violations by providing them with the ''benefit'' of avoiding the more expensive and burdensome requirements associated with an independent monitor.

Insight Into DOJ's Decision-Making Process. For many years, DOJ has faced criticisms regarding the lack of clarity surrounding the factors considered when deciding whether to enter a DPA or NPA.[21] In October, the Organisation for Economic Co-Operation and Development publicly validated those concerns when it released its Phase 3 review of the United States' anti-bribery enforcement efforts.[22] In its report, the OECD noted that ''[g]uidance on when prosecutors may use PAs, DPAs and NPAs exists but is slightly uneven and indirect.''[23] The OECD also noted that ''[p]ublishing more detailed reasons for entering into DPAs and NPAs would give more insight into DOJ's choice of settlement agree-

[10] Lanny Breuer, Assistant Attorney General, Address to the 24th Conference on the Foreign Corrupt Practices Act (Nov. 16, 2010), available at http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101116.html.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Peter J. Henning, *When Judges Refuse to Be Rubber Stamps*, N.Y. TIMES (March 22, 2010), available at http://dealbook.nytimes.com/2010/03/22/when-judges-refuse-to-be-rubber-stamps.

[15] *Id.*

[16] *Id.*

[17] Memorandum of Gary G. Grindler, Acting Deputy Attorney General, to Heads of Department Components and United States Attorneys, Additional Guidance on the Use of Monitors in Deferred Prosecution and Non-Prosecution Agreements with Corporations n.2 (May 25, 2010), available at http://www.justice.gov/dag/dag-memo-guidance-monitors.pdf.

[18] *Id.*

[19] *Id.*

[20] *See, e.g.*, Pride International DPA (Nov. 4, 2010); Tidewater Marine International DPA (Nov. 4, 2010); 5 WCR 802.

[21] *See, e.g.*, F. Joseph Warin and Andrew S. Boutros, *Deferred Prosecution Agreements: A View from the Trenches and a Proposal for Reform*, 93 VA. L. REV. IN BRIEF 121 (2007).

[22] Organization for Economic Co-Operation and Development, *United States: Phase 3* (Oct. 15, 2010), available at http://www.oecd.org/dataoecd/10/49/46213841.pdf; 5 WCR 734.

[23] *Id.* at 32.

ments and, thus, enhance accountability and transparency of the process.''[24]

During 2010, DOJ made improvements in this arena as well. Several agreements contained an analysis of applicable federal sentencing guidelines to provide additional support for the ultimate outcome.[25] Furthermore, many of the 2010 agreements included a separate section titled ''Relevant Considerations'' that listed the ''facts and circumstances'' presented by each case that federal prosecutors considered when entering into the agreement.[26] This section does not provide a complete inventory of all factors considered, however, nor does it provide the weight given to any particular factor. This is particularly important with respect to voluntary disclosures. Although the more recently entered agreements often note when a corporation has voluntarily disclosed misconduct, they do not explicitly specify how much weight DOJ gave this factor in deciding whether to enter an agreement or explain what effect, if any, voluntary disclosure had on the terms of the agreement or the choice made between a DPA or an NPA. Further clarification would certainly aid corporations in understanding the consequences of self-disclosure and provide empirical support for DOJ's assertion that self-disclosure results in tangible benefits to a corporation.[27]

The judiciary also has been more active in voicing critiques regarding decisional clarity during 2010. In addition to Huvelle's comments regarding corporate monitors, Judge Emmet G. Sullivan, of the U.S. District Court for the District of Columbia, voiced several concerns with the use of DPAs and NPAs. During the hearing regarding approval of the Justice Department's DPA with Barclays Bank, Sullivan questioned whether the DPA was a sufficient penalty, and he criticized DOJ for not bringing charges against the individuals who committed the acts.[28] DOJ defended the agreement, asserting that the $298 million penalty faced by Barclays was ''well in excess'' of the amount of money the bank earned from its conduct.[29]

Criticisms Regarding DPAs, NPAs for FCPA Violations. Nowhere has DOJ faced greater scrutiny regarding its use of DPAs and NPAs than in the FCPA context. Some of the major critiques were highlighted during a recent hearing of the Senate Judiciary Subcommittee on Crimes and Drugs titled ''Examining Enforcement of the Foreign Corrupt Practices Act.''[30] The hearing highlighted the need for increased clarity about the meaning of the act's terms. Sen. Amy Klobuchar (D-Minn.), for example, suggested that additional guidelines from DOJ on the FCPA's requirements may be necessary to give companies more guidance on what types of activities are covered by the law.[31] She argued that this kind of clarity will incentivize corporations to adopt appropriate compliance procedures and voluntarily disclose the violations of rogue employees.[32] Deputy Assistant Attorney General Greg Andres explained that DOJ's Fraud Section, the division of DOJ charged with primary enforcement of the FCPA, makes all of its DPAs and NPAs publicly available to provide additional clarity to corporations.[33]

As part of this move toward increased clarity, the ''Statement of Facts'' provided in each agreement has become increasingly lengthy and detailed, outlining the alleged misconduct with specificity. Arguably, this level of specificity provides corporations with additional information with which to identify the conduct that could result in a violation of the FCPA. But because FCPA allegations against corporations rarely, if ever, go to trial, and because DPAs and NPAs are subject only to minimal judicial scrutiny, DOJ's sometimes expansive interpretations of the FCPA are never truly tested.

As further evidence of how DPAs and NPAs have evolved in response to criticisms, mandated corporate compliance procedures have become increasingly standardized in FCPA-related agreements. These corporate compliance procedures may be used by corporations as guideposts in attempting to create appropriate anti-corruption programs. In that same vein, on Feb. 18, 2010, the OECD adopted its ''Good Practice Guidance on Internal Controls, Ethics, and Compliance'' guidelines.[34] These guidelines are intended to serve as an example to companies ''for establishing and ensuring the effectiveness of internal controls, ethics, and compliance programs or measures for preventing and detecting'' foreign bribery.[35]

In developing its good practice guidelines, OECD appears to have deliberately mirrored many of the provisions previously set forth in FCPA-related agreements.[36] After the release of the OECD guidelines, DOJ also incorporated many of the OECD's recommendations into their required corporate compliance procedures. The adoption of the OECD language may help provide standardization in requirements regarding compliance programs across OECD anti-bribery convention signatory nations, which could help alleviate concerns that American companies are placed at a com-

[24] *Id.* at 33.

[25] *See, e.g.,* ABB Ltd. DPA (Sept. 29, 2010) (5 WCR 695); Kos Pharmaceuticals DPA (Dec. 7, 2010) (5 WCR 885).

[26] *See, e.g.,* Pride International DPA (Nov. 4, 2010); Tidewater Marine International DPA (Nov. 4, 2010); 5 WCR 802.

[27] *See* 5 WCR 812, 11/19/10.

[28] *Judge calls Barclays pact 'sweetheart deal,'* Financial News (Aug. 18, 2010), available at http://www.efinancialnews.com/story/2010-08-18/barclays-sweetheart-pact.

[29] *Id.*

[30] *Examining Enforcement of the Foreign Corrupt Practices Act*, hearing before the Senate Judiciary Subcommittee on Crime and Drugs (Nov. 30, 2010), available at http://judiciary.senate.gov/hearings/hearing.cfm?id=4869.

[31] *Id.*; 5 WCR 860.

[32] *Id.*

[33] *Id.*

[34] OECD, *Good Practice Guidance on Internal Controls, Ethics, and Compliance* (Feb. 18, 2010), available at http://www.oecd.org/dataoecd/5/51/44884389.pdf.

[35] *Id.*

[36] *Compare, e.g.*, corporate compliance program in the NPA between Helmerich & Payne Inc. and DOJ (July 29, 2009) (requiring, for example, ''a system of internal accounting controls designed to ensure that H&P makes and keeps fair and accurate books, records, and accounts,'' and ''a compliance code with a clearly articulated corporate policy against violations of the anti-corruption laws'') *with* OECD, *Good Practice Guidance on Internal Controls, Ethics, and Compliance* (requiring a ''system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts, to ensure that they cannot be used for the purpose of foreign bribery or hiding such bribery,'' and '' a clearly articulated and visible corporate policy prohibiting foreign bribery.'').

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petitive disadvantage worldwide, due to the costs associated with FCPA enforcement and compliance.

III. SEC's Groundbreaking Use of DPAs and NPAs

The Cooperation Initiative. The SEC's new cooperation initiative is designed to be ''a series of measures to further strengthen its enforcement program by encouraging greater cooperation from individuals and companies in the agency's investigations and enforcement actions.''[37] As part of this initiative, the SEC instituted ''new cooperation tools,'' including cooperation agreements, DPAs, and NPAs.[38] DOJ has used DPAs and NPAs for many years, but these agreements were ''not previously available in SEC enforcement matters.''[39] Although the import of DPAs and NPAs into the civil enforcement context is an important development, it is not surprising given that Robert Khuzami, SEC's director of enforcement, is a seasoned former federal prosecutor who is familiar with such agreements. In public statements, he repeatedly has emphasized his intention to streamline and bolster the SEC's Enforcement Division.[40]

On Dec. 17, the SEC entered its first corporate agreement, an NPA, with Carter's Inc. to resolve allegations that the company's former executive vice president engaged in financial fraud and insider trading.[41] The SEC press release accompanying the NPA identified the company's voluntary disclosure of the misconduct, its ''exemplary and extensive'' cooperation with the SEC investigation, and the ''relatively isolated nature of the unlawful conduct'' as factors that led the commission to agree not to prosecute the company.[42] The SEC charged the Carter's executive responsible for the misconduct but imposed no monetary penalty on the company itself.[43]

The Future of Commission DPAs and NPAs. While the Justice Department's DPAs and NPAs have matured over the years, the SEC's use of these agreements is still in its infancy. As such, it remains to be seen to what extent the SEC will adopt the decisional factors, compliance framework, or even agreement verbiage currently employed by DOJ. Similarly, there has been little time to adequately assess the criticisms that will inevitably come with this new enforcement apparatus.

It is notable, however, that the SEC has already taken several steps to demonstrate the transparency with which the commission will enter into DPAs and NPAs and the terms it imposes upon corporations subject to such agreements. For example, the SEC recently set up a website to publicly release all agreements entered into as part of the new cooperation initiative.[44] This is certainly a welcome step for those corporate entities looking for insight into the SEC decision-making process.

Furthermore, the SEC Enforcement Manual was amended to provide additional insight into the SEC deliberative process. The manual states that a DPA should generally include, among other conditions, that a company agrees to ''cooperate truthfully and fully,'' by ''producing all potentially relevant non-privileged documents and materials to the Commission, responding to all inquiries, appearing for interviews, and testifying at trials and other judicial proceedings.''[45] Similarly, the manual provides some specific considerations for when agreements may or may not be appropriate. For example, the manual states, ''Non-prosecution agreements should not be entered into in the early stages of an investigation when the role of the cooperating individuals or companies and the importance of their cooperation are unclear.''[46]

Despite these efforts, however, it is obvious that the SEC's new guidelines are still subject to differing interpretations and are vulnerable to inconsistent application. Although these additions to the SEC Enforcement Manual signal an attempt by the commission to avoid some mistakes and build on the learning curve set by DOJ, more clarity by the commission will be necessary in order for potential corporate offenders to successfully navigate the new system. The Carter's NPA, for example, was noteworthy for its brevity, as well as its novelty. In some ways, the accompanying SEC press release provided more guidance as to the relevant considerations than the NPA itself. As the SEC enters into more DPAs and NPAs in the coming years, it would not be surprising to see the commission follow in DOJ's footsteps by including more of this pertinent information in the agreements entered into with corporate offenders.

Conclusion

Despite their novelty just a decade ago, DPAs and NPAs are clearly viewed as a viable alternative to traditional prosecutions by both DOJ and the SEC alike. It is also apparent that as the use of DPAs and NPAs continues to expand and is subjected to further scrutiny, DOJ is adapting its practices and procedures to address these criticisms. With the expansion of DPAs and NPAs to SEC enforcement matters, these agreements will continue to mature, and the size, scope, format, and basis for these agreements will continue to develop. As a result, corporations that may be subject to governmental investigations must continue to keep abreast of the evolving nature of these agreements in order to understand what impact these changes have on the company's efforts to report and remediate corporate wrongdoing.

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[37] SEC press release, *SEC Announces Initiative to Encourage Individuals and Companies to Cooperate and Assist in Investigations* (Jan. 13, 2010), available at http://www.sec.gov/news/press/2010/2010-6.htm.

[38] *Id.*

[39] *Id.*

[40] *See, e.g.*, SEC Enforcement Director Robert Khuzami's address to the New York City Bar Association (Aug. 5, 2009), available at http://s.wsj.net/public/resources/documents/WSJ_KhuzamiSpch090805.pdf.; 4 WCR 570

[41] NPA between Carter's and the SEC (Dec. 17, 2010), available at http://www.sec.gov/litigation/cooperation/2010/carters1210.pdf.

[42] SEC press release, *SEC Charges Former Carter's Executive with Fraud and Insider Trading* (Dec. 20, 2010), available at http://www.sec.gov/news/press/2010/2010-252.htm.

[43] *Id.*

[44] SEC cooperation program agreements, available at http://www.sec.gov/litigation/cooperation.shtml.

[45] SEC Enforcement Manual 134 (Jan. 13, 2010), available at http://www.sec.gov/divisions/enforce/enforcementmanual.pdf.

[46] *Id.* at 136.

Appendix A 2010 Deferred and Non Prosecution Agreements						
Company	**Violation**	**Type**	**DPA/ NPA Penalty**	**Total DOJ Penalty***	**Monitor**	**Term**
ABB Ltd.	FCPA	DPA	$1.92 million	$58.3 million	No	3 years
ABN Amro Bank N.V.	International Emergency Economic Powers Act (Sanctions Violation)	DPA	$500 million	$500 million	No	1 year
Alliance One International Inc.	FCPA	NPA	None	$19.45 million	Yes	3 years
Barclays Bank	Trading with the Enemy Act and International Emergency Power Act	DPA	$149 million	$298 million	No	2 years
Carter's, Inc.**	Financial Fraud	NPA	None	None	No	N/A
Ceramic Protection Corp. of America	False Statements (Gov't Contracts)	DPA	$267,000	$267,000	No	14 months
CVS Pharmacy, Inc.	Combat Methamphetamine Epidemic Act	NPA	$77.6 million	$77.6 million	No	3 years
Daimler AG	FCPA	DPA	$93.6 million	$185 million	Yes	2 years and 7 days
Daimler Chrysler China Ltd.	FCPA	DPA	None	$185 million	Yes	2 years and 7 days
Deutsche Bank	Tax Shelters	NPA	$553.6 million	$553.6 million	Yes	2 years
Exactech	Federal Anti-Kickback Statute (Healthcare Fraud)	DPA	None	$2.99 million	Yes	1 year
General Reinsurance Corp.	Fraud (Insurance)	NPA	$19.5 million	$80 million	No	3 years
Kos Pharmaceuticals	Federal Anti-Kickback Statute (Healthcare Fraud)	DPA	$3.36 million	$41.52 million	No	6 months
Louis Berger Group	Fraud	DPA	$18.7 million	$69.3 million	Yes	2 years
MetLife	False Statements (ERISA)	NPA	$13.5 million	$32.5 million	No	2 years
Noble Corp.	FCPA	NPA	$2.6 million	$8.18 million	No	3 years
Panalpina World Transport Ltd.	FCPA	DPA	$70.56 million	$81.92 million	No	3 years and 7 days
PPG	Export Control	NPA	$2 million	$2,032,319	No	2 years
Pride International	FCPA	DPA	$32.63 million	$56.16 million	No	3 years and 7 days
RAE Systems Inc.	FCPA	NPA	$1.7 million	$3 million	No	3 years
Schiavone Construction	Fraud	NPA	$20 million	$22.37 million	No	3 years
Shell Nigeria	FCPA	DPA	$30 million	$48.15 million	No	3 years and 7 days
Shoppers Food Warehouse Corp.	Travel Act	DPA	$2.5 million	$2.5 million	No	2 years
Sirchie Acquisition Co., LLC	International Emergency Economic Powers Act (Export Violation)	DPA	$12.6 million	$12.6 million	Yes	3 years
Snamprogetti Netherlands B.V.	FCPA	DPA	$240 million	$365 million	No	2 years
Sportingbet PLC	Internet Gambling	NPA	$33 million	$33 million	No	3 years
Technip S.A.	FCPA	DPA	$240 million	$338 million	Yes	2 years
Tidewater Marine International	FCPA	DPA	$7.35 million	$15.67 million	No	3 years and 7 days
Transocean	FCPA	DPA	$13.44 million	$20.71 million	No	3 years and 7 days
Universal	FCPA	NPA	None	$8.9 million	Yes	3 years and 7 days
Wachovia	Money Laundering	DPA	$160 million	$160 million	No	1 year

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Company	Violation	Type	DPA/ NPA Penalty	Total DOJ Penalty*	Monitor	Term
Wright Medical Technology, Inc.	Federal Anti-Kickback Statute (Healthcare Fraud)	DPA	None	$7.9 million	Yes	1 year

* These figures include monetary penalties from the agreement itself, plus other monetary penalties arising out of the same facts that gave rise to the agreement, such as guilty pleas of associated entities, and/or settlements with the SEC, HHS, or state prosecuting and regulatory entities. Because this information is not kept in a central repository, it is difficult to report these numbers with absolute accuracy.

** This NPA was entered by the SEC, rather than DOJ.