March 28, 2023

FCPA 2022 YEAR-END UPDATE

GIBSON DUNN

CLE Credit

- Most participants should anticipate receiving their certificate of attendance approximately eight weeks following the webcast.
- Please complete the form within one week to receive credit: https://gibsondunn.qualtrics.com/jfe/form/SV_0p3FUkWev5mWpWC
- All questions regarding MCLE Information should be directed to CLE@gibsondunn.com.

Today's Panelists

Patrick Stokes
PStokes@gibsondunn.com
TEL:+1 202.955.8504

John Chesley
JChesley@gibsondunn.com
TEL:+1 202.887.3788

Ella Alves Capone
ECapone@gibsondunn.com
TEL:+1 202.887.3511

Bryan Parr
BParr@gibsondunn.com
TEL:+1 202.777.9560

Agenda

01 FCPA Overview and Enforcement Statistics

02 FCPA Legal Updates

03 DOJ Corporate Enforcement Framework Updates

04 FCPA Trends and Enforcement Actions

05 Takeaways for Anti-Corruption Compliance Programs

GIBSON DUNN

FCPA Overview and Enforcement Statistics

FCPA Overview

The FCPA was enacted in 1977 in the wake of reports that numerous U.S. businesses were making payments to foreign government officials to secure business overseas.

- **Anti-Bribery Provisions.** The FCPA prohibits corruptly giving, promising, or offering anything of value to a foreign government official, political party, or party official with the intent to influence that official in his or her official capacity or to secure an improper advantage in order to obtain or retain business.
- **Accounting Provisions.** The FCPA also requires "issuers" to maintain accurate "books and records" and reasonably effective internal accounting controls.

U.S. Enforcement Agencies

Department of Justice

- Criminal enforcement of anti-bribery provisions
- Criminal enforcement of corruption-related statutes, e.g., money laundering
- ~35 prosecutors in the Criminal Division

Securities and Exchange Commission

- Civil enforcement of the anti-bribery provision (issuers)
- Civil enforcement of the accounting provisions (books and records and internal controls)

FCPA Anti-Bribery Provisions

- The FCPA prohibits not only completed payments, but also **any offer, promise, or authorization of the provision of anything of value**.
  - An offer to make a prohibited payment or gift, even if rejected, may violate the FCPA.
- The FCPA also prohibits **indirect corrupt payments**.
  - The FCPA imposes liability if a covered company or person authorizes a payment to a third party while "knowing" that the third party will make a corrupt payment.
  - "Knowledge" includes "willful blindness" or "conscious avoidance," such as where a person is aware of a high probability of a fact but intentionally avoids confirming that fact.
  - Third parties include local agents, attorneys, brokers, consultants, distributors, joint-venture partners, liaisons, and subsidiaries.
- There is **no "de minimis" exception**, and **a "thing of value" can include**:

Charitable / Political Contributions	Consulting Fees	Entertainment / Sporting Events
Education / Internships / Training	Free Goods	Gifts
Grants / Research Support	Meals	Travel

FCPA Accounting Provisions

- **Connection to Bribery Allegations.** Unlike the FCPA's anti-bribery provisions, the books-and-records and internal controls provisions do not require a nexus between:
  - An inaccurate book or record or a weak control, and
  - An improper payment.
- **DOJ / SEC Approach.** The government often invokes the accounting provisions where it lacks jurisdiction to bring a bribery charge or when it is seeking to compromise in the context of settlement negotiations.
  - The SEC has shown a greater willingness to bring charges based on the accounting provisions even where it lacks sufficient evidence to conclude that bribery occurred.
  - The SEC brings accounting provision charges against issuers, whereas DOJ may bring parent or subsidiary accounting provision charges.
- **Compliance Controls.** The SEC takes an expansive approach to the internal controls provision, including non-accounting-related deficiencies and issues traditionally that it perceives as associated with weak corporate compliance programs.

Use of Money Laundering Offenses in FCPA Enforcement Actions

- DOJ continues to use **anti-money laundering ("AML") charges** for foreign corruption-related conduct. AML offenses can be easier to capture and can be brought against certain conduct and individuals that the FCPA doesn't reach.
  - For instance, AML charges can be brought against the foreign official recipient of a bribe payment.
- AML statutes generally criminalize **conducting or attempting to conduct a transaction involving proceeds of "specified unlawful activity"** with knowledge they are proceeds of "unlawful activity."
  - **Unlawful Activity** – Generally any violation of criminal law – federal, state, local or foreign.
  - **Specified Unlawful Activities** – There are over 200 specified unlawful activities consisting of U.S. (e.g., FCPA) and certain foreign crimes (e.g., bribery of a public official, embezzlement of public funds, fraud, and defrauding a foreign bank).
  - **Knowledge includes "willful blindness"** – Ignoring red flags.

Key DOJ Personnel

Attorney General
Merrick Garland

Deputy Attorney General
Lisa Monaco

Criminal Division
Assistant Attorney General Kenneth Polite, Jr.

Fraud Section
Chief
Glenn Leon

FCPA Unit
Chief
David Last

CECP Unit
Chief
Andrew Gentin

Key SEC Personnel

Commissioner
Mark T. Uyeda
(Term expires 2023)

Commissioner
Caroline Crenshaw
(Term expires 2024)

Chairman
Gary Gensler
(Term expires 2026)

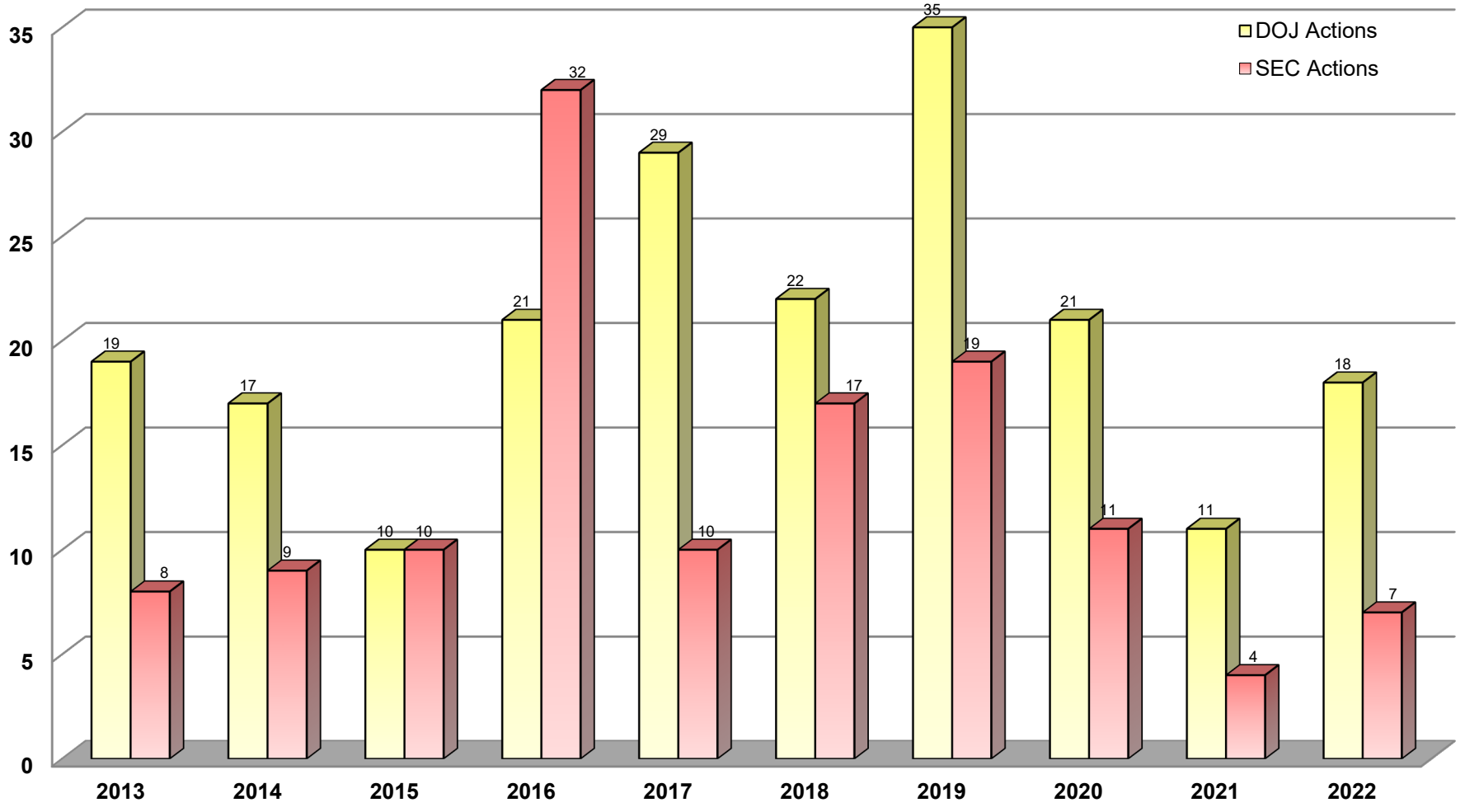
Commissioner
Hester M. Peirce
(Term expires 2025)

Commissioner
Jaime Lizarraga
(Term expires 2027)

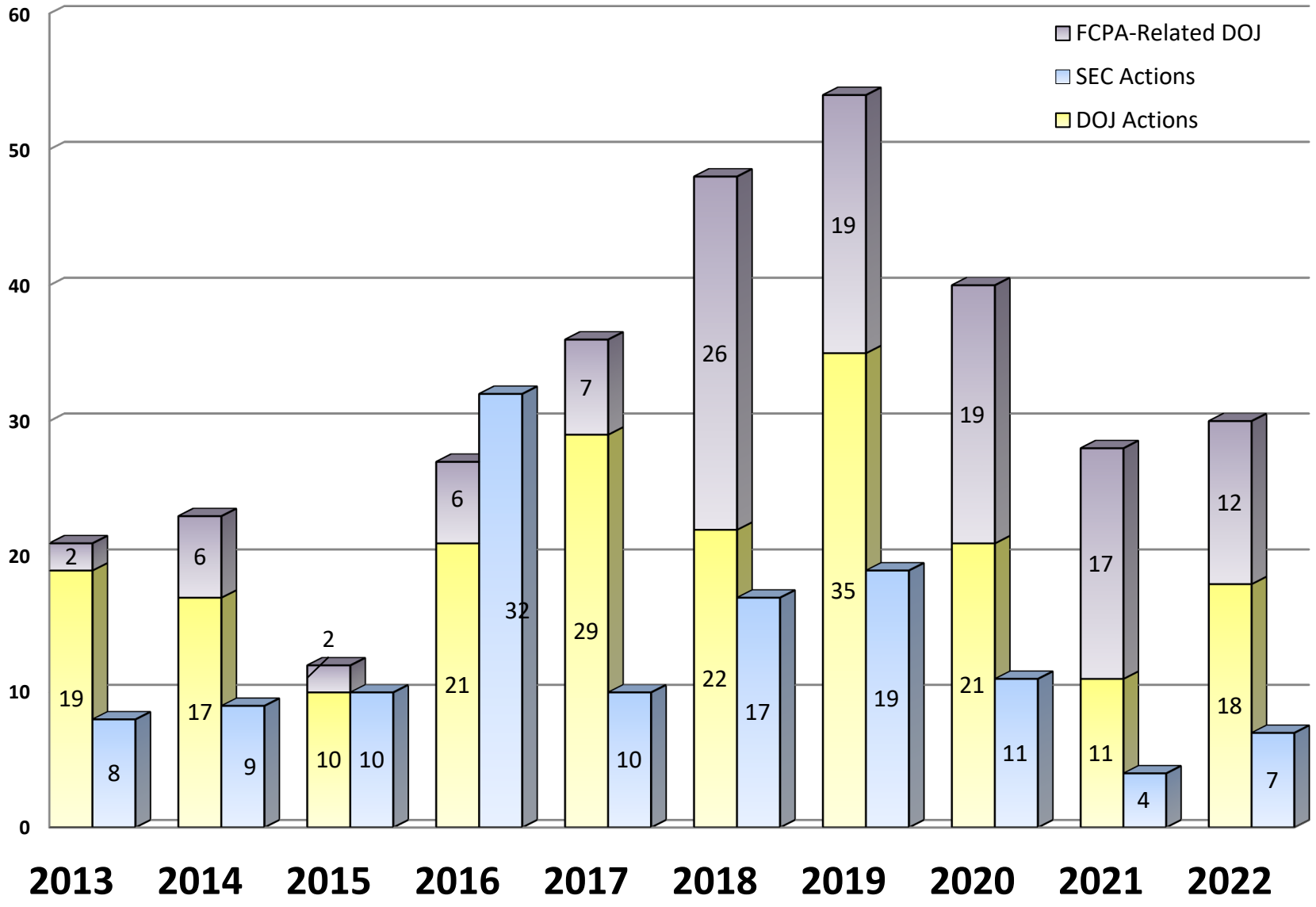
Enforcement
Director - Gurbir Grewal

FCPA Unit
Chief – Charles Cain

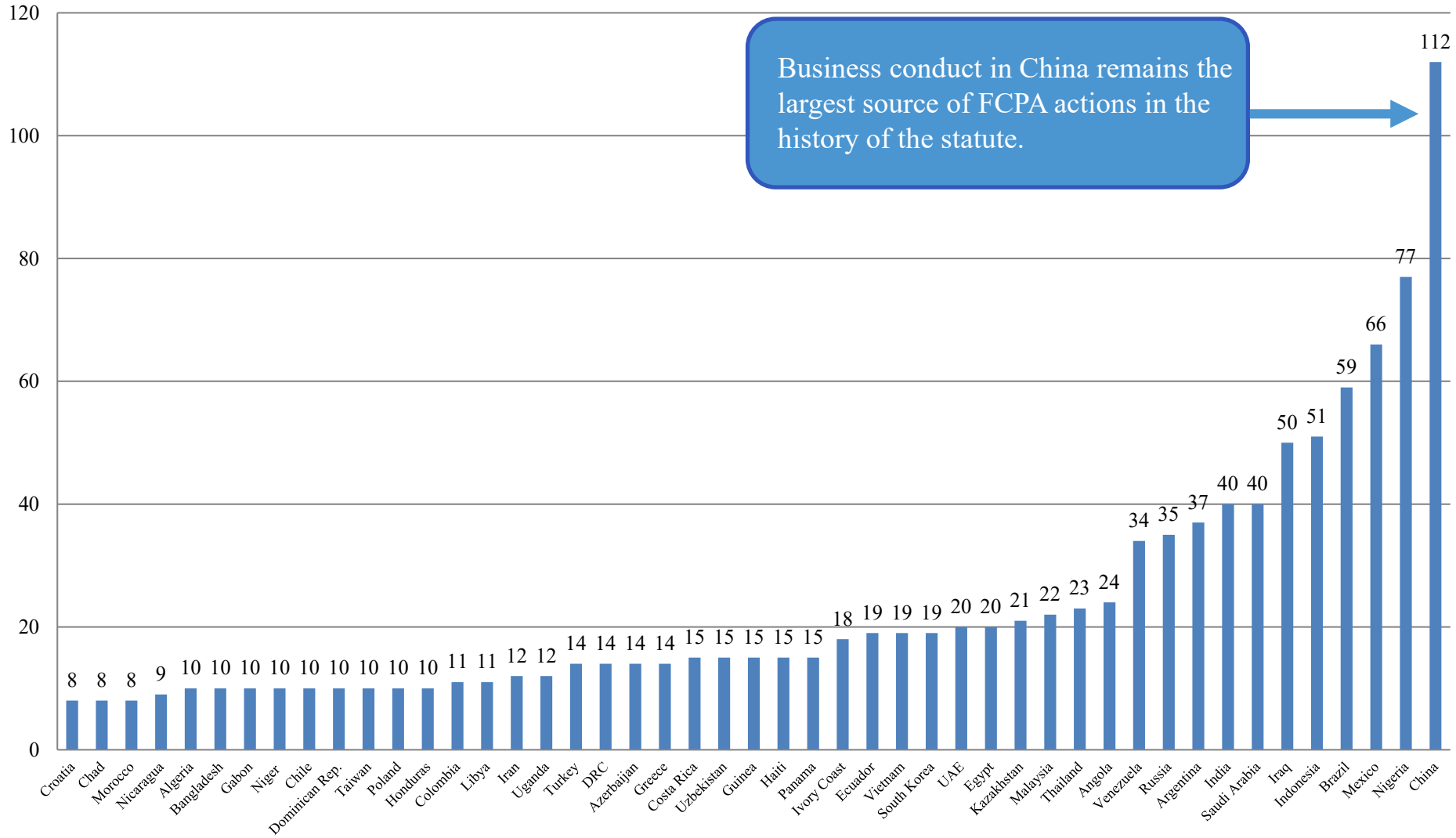
FCPA Enforcement Actions (2013 – 2022)



FCPA + FCPA-Related Enforcement Actions (2013 – 2022)



Number of FCPA Enforcement Actions by Country (1978 to 2022)



GIBSON DUNN

FCPA Legal Updates

FCPA Opinion Letter 22-01

- On January 21, 2022, DOJ issued its first **opinion procedure** since 2020 (and its second since 2014) interpreting how the FCPA applies to payments made under physical duress in response to extortionate demands by foreign officials.
- Requestor is a U.S. domestic concern that owns and operates maritime vessels. While awaiting entry to the port of Country B, one of Requestor's vessels inadvertently anchored in waters of Country A and was intercepted by that country's navy. The vessel's captain was detained without access to care needed to address his "serious medical conditions," and Requestor was contacted with a demand for $175,000 cash for the captain's release and permission to leave Country A. Requestor sought DOJ's opinion that making the payment would not violate the FCPA.
- DOJ concluded that it would not pursue an enforcement action on these facts because "Requestor would not be making the payment 'corruptly' or to 'obtain or retain business.'"
  - **No "corrupt intent"** because the primary motivation in making the payment was to "avoid imminent and potentially serious harm to the captain and the crew."
    - DOJ distinguished this circumstance of physical duress from economic duress—where companies are "shaken down" for corrupt payments at the risk of unjust financial consequences.
  - **Not done to "obtain or retain business"** because there was no ongoing or anticipated business in Country A.

Fifth Circuit Holding on "Agents" of Domestic Concerns and Running of Statute of Limitations

United States v. Bleuler, No. 21-20658

- In February 2023, the Fifth Circuit reinstated FCPA and money laundering indictments against Swiss wealth management advisors Daisy Teresa Rafoi Bleuler and Paulo Jorge Da Costa Casqueiro Murta, who were charged with setting up accounts to launder bribes associated with alleged corrupt business dealings with PDVSA. The indictment had been dismissed based on a findings that there were insufficient U.S. contacts and the indictment was untimely.
- The Fifth Circuit held:
  - For the FCPA offense, the indictment sufficiently alleged the defendants were agents of a domestic concern and that "agency" allegations were not unconstitutionally vague on their face because, although the term is not defined in the FCPA, a person of common intelligence can understand its meaning.
  - For the money laundering offense, there is "no physical-presence requirement" so it is sufficient to allege that the unlawful transactions occurred, in part, in the United States.
  - As to the statute of limitations, 18 U.S.C. § 3292's reference to an "indictment" where it describes tolling for an MLAT "filed before return of an indictment" is meant to refer to an indictment in which the defendant is charged.
- The precedential value of this decision is limited to the facts of this case.

Fifth Circuit Declares SEC Practice of Imposing Civil Monetary Penalties in Administrative Proceedings Unconstitutional

- On May 18, 2022, the Fifth Circuit held in *Jarkesy v. SEC* that the **SEC imposing civil monetary penalties in administrative proceedings is unconstitutional** because Congress delegated its legislative power to the SEC without providing an intelligible principle by which the SEC could exercise that power.
- The Court recognized that Congress had authority to assign disputes to agency adjudication in "special circumstances," but found that here Congress had given the SEC "exclusive authority and absolute discretion to decide whether to bring securities fraud enforcement actions within the agency instead of in an Article III court" while saying "nothing at all indicating how the SEC should make that call." The Fifth Circuit further concluded that the SEC's in-house adjudication violated the Petitioners' Seventh Amendment right to a jury trial.
- There are several other interesting issues that arose in this.

GIBSON DUNN

DOJ Corporate Enforcement Framework Updates

DOJ Corporate Enforcement Framework Updates

- On September 15, 2022, Deputy Attorney General Monaco issued a memorandum updating her prior 2021 guidance concerning DOJ's corporate criminal enforcement policies with the benefit of the Corporate Crime Advisory Group's work.
- The announcement covers six key areas generally relevant to white collar corporate crime:
    1. Expressing a clear priority for individual prosecutions;
    2. Evaluating companies' history of misconduct;
    3. Requiring all corporate criminal enforcement components of DOJ to develop voluntary self-disclosure policies;
    4. Evaluating corporate cooperation;
    5. Evaluating corporate compliance programs; and
    6. Evaluating the imposition of corporate compliance monitors.
- Emphasis on prosecutors considering the timeliness of companies reporting on individual misconduct and on companies' engaging in compensation clawbacks from executives and other compensation disincentives to shift the burden of financial penalties from enforcement.

DOJ Corporate Enforcement Framework Updates

- On January 17, 2023, Criminal Division Assistant Attorney General Kenneth A. Polite, Jr. issued a **new Criminal Division Corporate Enforcement & Voluntary Self-Disclosure Policy** outlining the requirements for companies to receive credit for cooperation, disclosure, and remediation in investigations.
- The primary differences from the 2016 policy are:
  - **Increased maximum credits** for companies that cooperate, remediate, and/or voluntarily disclose.
  - **Enhanced guidance on the point within the Sentencing Guidelines range from which credit is applied** for cooperating, non-cooperating, and recidivist companies.
  - **Expanded from FCPA Unit to Criminal Division**.

DOJ Corporate Enforcement Framework Updates

- To qualify for a presumption of a declination: (i) self-disclosure, without aggravating circumstances; (ii) full cooperation; and (iii) timely and appropriate remediation. No declination if there is no self-disclosure or if there are aggravating circumstances.
  - Since 2016, there have been 17 publicized declinations under this policy, with three of those within the last year.
- Where a company (1) voluntarily self-discloses, (2) fully cooperates, and (3) appropriately remediates, DOJ will issue a declination (with disgorgement) or, in the event of a prosecution, recommend up to a 75% reduction off the USSG fine range and generally not require a monitor.
- Even when a company does not voluntarily disclose, full cooperation and appropriate remediation will result in an up to 50% reduction off the USSG fine range.
- Point from which the credit is applied within the USSG range:
  - Middle of range or higher for recidivists
  - Bottom for cooperating companies
- USAM 9-28.000 has additional corporate enforcement guidance, applicable across DOJ.

Emphasis on Compliance Programs

- Under the Biden administration, DOJ and SEC (among other U.S. regulators) have vowed to **aggressively scrutinize corporate compliance programs** as part their enforcement activities.
- Among other policy shifts, DOJ **emphasized that compliance monitorships would no longer be the exception.**
- DOJ's latest guidance states that a **monitorship will likely be required** when a company's compliance program and internal controls are "**untested, ineffective, inadequately resourced, or not fully implemented**" before a resolution.

Assistant Attorney General Kenneth Polite's Remarks on Corporate Compliance and Enforcement (March 25, 2022)

"As our Evaluation of Corporate Compliance Programs guidance makes clear, we expect an effective corporate compliance program to be much more than a company's policies, procedures, and internal controls. We expect companies to implement compliance programs that: (1) are well designed, (2) are adequately resourced and empowered to function effectively, and (3) work in practice."

1. "[W]e closely examine the company's process for assessing risk and building a program that is tailored to manage its specific risk profile."
2. "A company's commitment to promoting compliance and ethical values at all levels–from the chief executive on down to middle and lower-level managers–is critical."
3. "We look at whether the company is continuously testing the effectiveness of its compliance program, and improving and updating the program to ensure that it is sustainable and adapting to changing risks."

Corporate Compliance Program Evaluations

- In March 2023, DOJ issued a series of updates to its guidance related to corporate compliance programs, including revisions to the **Evaluation of Corporate Compliance Programs,** the **Revised Memorandum on Selection of Monitors in Criminal Division Matters**, and **The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks.**
- Two key takeaways from the latest suite of updates are DOJ's continued emphasis on:
  - **Clawback or recoupment of compensation from employees responsible for misconduct, directly or through lack of supervision, in appropriate cases**; and
  - Appropriate **compliance policies and procedures related to the use of personal devices and communication platforms**, including ephemeral messaging applications.
    - **Key Questions:** Does a company have a policy covering the various communications methods, and is the company enforcing it?
- Although not legal requirements, these are standards against which companies will be evaluated in the context of a DOJ investigation.

2023 Updated Evaluation of Corporate Compliance Programs Guidance

- **2023 Evaluation of Corporate Compliance Programs Guidance** provides prosecutors a set of factors they should consider while evaluating the compliance programs of corporations facing a criminal resolution, which companies can use to benchmark their own compliance programs against.
  - Corporations should develop and maintain a **positive compliance culture by establishing incentives for compliance and disincentives for compliance** failures.
    - Prosecutors are directed to consider whether the compliance program appropriately "identif[ies], investigate[s], discipline[s], and remediate[s] violations of law, regulation, or policy," taking into consideration whether there is **transparent communication regarding disciplinary processes** and actions and **tracking of data on disciplinary actions** to monitor the effectiveness of the compliance program.
  - Corporations should have **compensation schemes that foster a positive compliance culture** and reduce the financial burden on shareholders and investors when misconduct results in monetary consequences.
    - Prosecutors are directed to consider **compensation incentives for compliance**, attempted **compensation clawbacks** for corporate misconduct, and incorporating compliance into **career advancement opportunities.**

2023 Monitorship Memorandum

- On March 1, 2023, AAG Polite issued a **Revised Memorandum on Selection of Monitors in Criminal Division Matters,** codifying the policies announced in the September 2022 Monaco memo by advising that when determining whether to impose a monitorship, prosecutors should consider ten non-exhaustive factors to assess the need for, and potential benefits of, a monitor.
- Generally, **a monitorship should be considered where a corporation's compliance program and controls are "untested, ineffective, inadequately resourced, or not fully implemented at the time of a resolution."**
  - On the other hand, where a corporation's compliance program and controls are "demonstrated to be tested, effective, adequately resourced, and fully implemented at the time of a resolution," a monitor may not be necessary.
- This memorandum also clarifies that (1) many of the **requirements for monitors apply to monitor teams**, in addition to the named monitor; (2) **monitor selections that keep with DOJ's commitment to diversity, equity, and inclusion**; and (3) **3+ years cooling-off period** for monitors.

2023 Compensation Pilot Program

- **The Pilot Program:** Promoting Compliance through Compensation Clawbacks is a three-year initiative applicable to all corporate Criminal Division matters requiring that corporate resolutions **require defendant companies to implement compliance-promoting criteria in its compensation and bonus systems and to report to the Criminal Division annually** about their implementation of this requirement.
    - Prohibition on bonuses for employees who do not satisfy compliance performance requirements;
    - Disciplinary measures for employees who violate applicable law and those who (a) had supervisory authority over the employee(s) or business area engaged in the misconduct, *and* (b) knew of, or were willfully blind to, the misconduct; and
    - Incentives for employees who demonstrate full commitment to compliance processes.
- The Pilot Program also recognizes that **companies may receive a deferred reduction in fines** if it has in good faith initiated a process to **recoup compensation from individual wrongdoers** before the resolution.
    - The Program provides dollar for dollar credit for funds actually recovered; and
    - The Program also provides, at the discretion of prosecutors, for reduction of up to the 25% of the amount of compensation the company sought in good faith, but failed to recover.

GIBSON DUNN

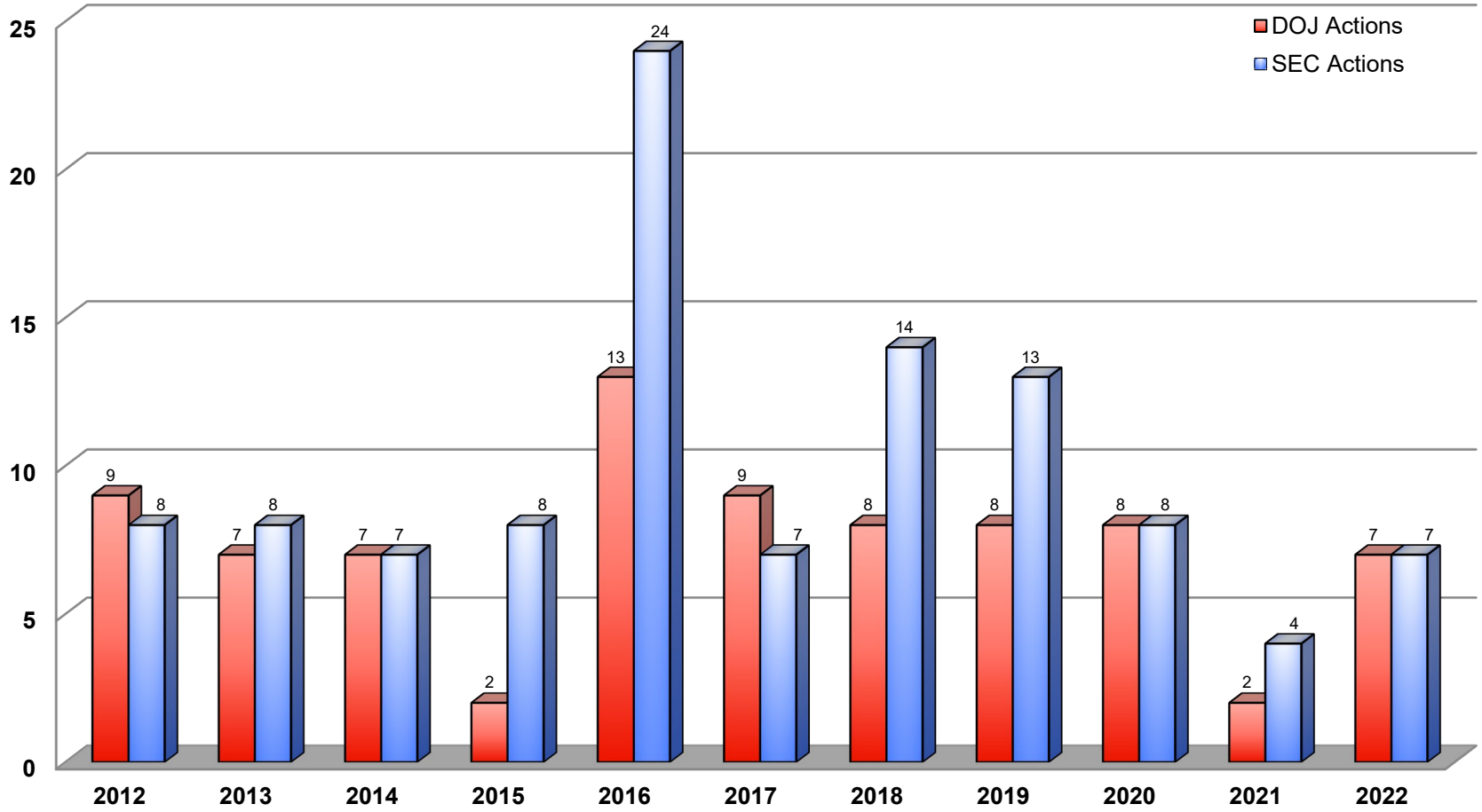
FCPA Trends and Enforcement Actions

2022 FCPA Enforcement Trends

- A rebound in corporate FCPA enforcement actions;
- Revitalized interest in corporate monitorships;
- Resolutions involving activity in Latin America;
- Individual FCPA and FCPA-related enforcement continues apace; and
- Resumption of public declinations

Increase in Corporate FCPA Enforcement Actions & Penalties

- In 2022, there was a rebound in the number of corporate FCPA enforcement matters and penalties.



Increase in Corporate FCPA Enforcement Actions & Penalties

- On top of a rise in the number of enforcement actions, **the total value of FCPA resolutions in 2022 increased significantly** compared to the previous year.

Increase in Corporate FCPA Enforcement Actions & Penalties

No.	Company	Total Resolution	DOJ Component	SEC Component	Date
1	Goldman Sachs	$1,663,088,000	$1,263,088,000	$400,000,000	10/22/2020
2	Ericsson	$1,060,570,432	$520,650,432	$539,920,000	12/06/2019
3	Mobile TeleSystems	$850,000,000	$750,000,000	$100,000,000	3/6/2019
4	Siemens AG	$800,000,000	$450,000,000	$350,000,000	12/15/2008
5	Alstom S.A.	$772,290,000	$772,290,000	--	12/22/2014
6	Glencore	$700,706,965	$700,706,965	--	5/24/2022
7	KBR/Halliburton	$579,000,000	$402,000,000	$177,000,000	2/11/2009
8	Teva	$519,000,000	$283,000,000	$236,000,000	12/22/2016
9	Telia	$483,103,972	$274,603,972	$208,500,000	9/21/2017
10	Och-Ziff	$412,000,000	$213,000,000	$199,000,000	9/29/2016

GLENCORE

- In the largest FCPA matter of 2022, Swiss multinational commodity trading and mining company Glencore International A.G. (“Glencore”) resolved criminal FCPA bribery charges with the Southern District of New York and the DOJ’s Fraud and Money Laundering Sections, in addition to separate anti-corruption resolutions with Brazilian and UK authorities.

- Glencore also separately resolved parallel civil and criminal market manipulation charges with a different unit of DOJ’s Fraud Section, the District of Connecticut and the U.S. Commodity Futures Trading Commission (“CFTC”) founded, in part, on the same conduct.

- In the FCPA matter, Glencore pleaded guilty to allegations of making more than $100 million in payments that were used to pay bribes to and for the benefit of foreign officials in Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, Brazil, Venezuela, and the Democratic Republic of the Congo.

GLENCORE

Penalties

- The assessment of penalties against Glencore involves a complex set of credits and offsets
- To resolve all the matters across various jurisdictions, Glencore is expected to pay approximately $1.5 billion in total
- The total being paid to the U.S. enforcement agencies is approximately $1.1 billion.
- Additionally, Glencore agreed to two separate three-year compliance monitors for the FCPA and market manipulation charges.

FCPA Portion of Penalties

- **Total Criminal Fine - $428.5 million**
  - Up to $136.2 million will be credited against amounts paid to UK authorities
  - Another $29.7 million will be credited against amount paid to Swiss authorities
  - Resulting in a total effective criminal fine of $262.6 million
- **Total Forfeiture Amount - $272.2 million**
  - Up to $90.7 million will be credited against payments made in CFTC action
  - Resulting in a total effective forfeiture amount of $181.5 million
- **Compliance Monitor**
  - Glencore agreed to a three-year compliance monitor

GLENCORE

• Delayed Production and Remediation

- The Plea Agreement noted Glencore's partial cooperation, but cooperation credit was reduced for "delays" in producing evidence and disciplining certain employees.
- The fine was 15% off the bottom of the guideline range for the alleged conduct.

d. The Defendant did not receive full credit pursuant to the Corporate Enforcement Policy, JM § 9-47.120, for its cooperation, because the Defendant did not at all times demonstrate a commitment to full cooperation and was delayed in producing some relevant evidence, or for its remediation, because it did not timely and appropriately remediate with respect to disciplining certain employees involved in the misconduct;

a. Disposition. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Offices and the Defendant agree that the appropriate disposition of this case is as set forth above, and agree to recommend jointly that the Court, at a hearing to be scheduled at an agreed upon time, impose a sentence requiring the Defendant to pay a criminal fine, as set forth below. Specifically, the parties agree, based on the application of the United States Sentencing Guidelines, that the appropriate total criminal fine is $428,521,173 ("Total Criminal Fine"). This reflects a 15 percent discount off of the bottom of the applicable Sentencing Guidelines fine range for the Defendant's partial cooperation and remediation.

GLENCORE

• Establishing U.S. Nexus – With a Light Touch

- First, Glencore is neither a U.S. company nor issuer (hence, no SEC resolution).
- DOJ's jurisdiction appears to be premised loosely on the following:
  - Approval of certain payments by employees (including former West African oil trader Anthony Stimler, who pleaded guilty to FCPA charges) while in the United States,
  - The transmittal of at least one email from the United States by Stimler,
  - Use of U.S. correspondent banking accounts for at least some of the alleged bribe payments.
- Suggests that DOJ considers multi-country corruption matters taking place largely outside of the US to be within its ambit based on single acts taken by low-level co-conspirators while in the U.S. and, perhaps, even U.S. correspondent banking transactions

GLENCORE

- **DOJ Takes Unprecedented Step of Disgorging All Ill-Gotten Gains**
  - This action marked the first time that DOJ applied the amount of gain as an input for the USSG calculation, and additionally, disgorged gains through parallel forfeiture in an FCPA matter.

c. Base Fine. Based upon U.S.S.G. § 8C2.4(a)(2), the base fine is $315,089,098 (the pecuniary gain to the Defendant from the offense)

c. Forfeiture. The Defendant hereby admits that the facts set forth in Attachment A establish that the sum of $272,185,792 (the "Total Forfeiture Amount") is forfeitable to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c). The Offices agree that payments made by the Defendant in connection with its concurrent settlement of a related regulatory action brought by the CFTC shall be credited against the Total Forfeiture Amount in the amount of $90,728,597 (the "Civil Credit"). The Defendant therefore admits the forfeiture allegation with respect to Count One of the Information and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), a sum of money equal to $181,457,195 in United States currency, representing proceeds traceable to the commission of said offense (the "Money Judgment"), and which reflects the Total Forfeiture Amount less the anticipated payment of the Civil Credit to the CFTC. The Defendant agrees that

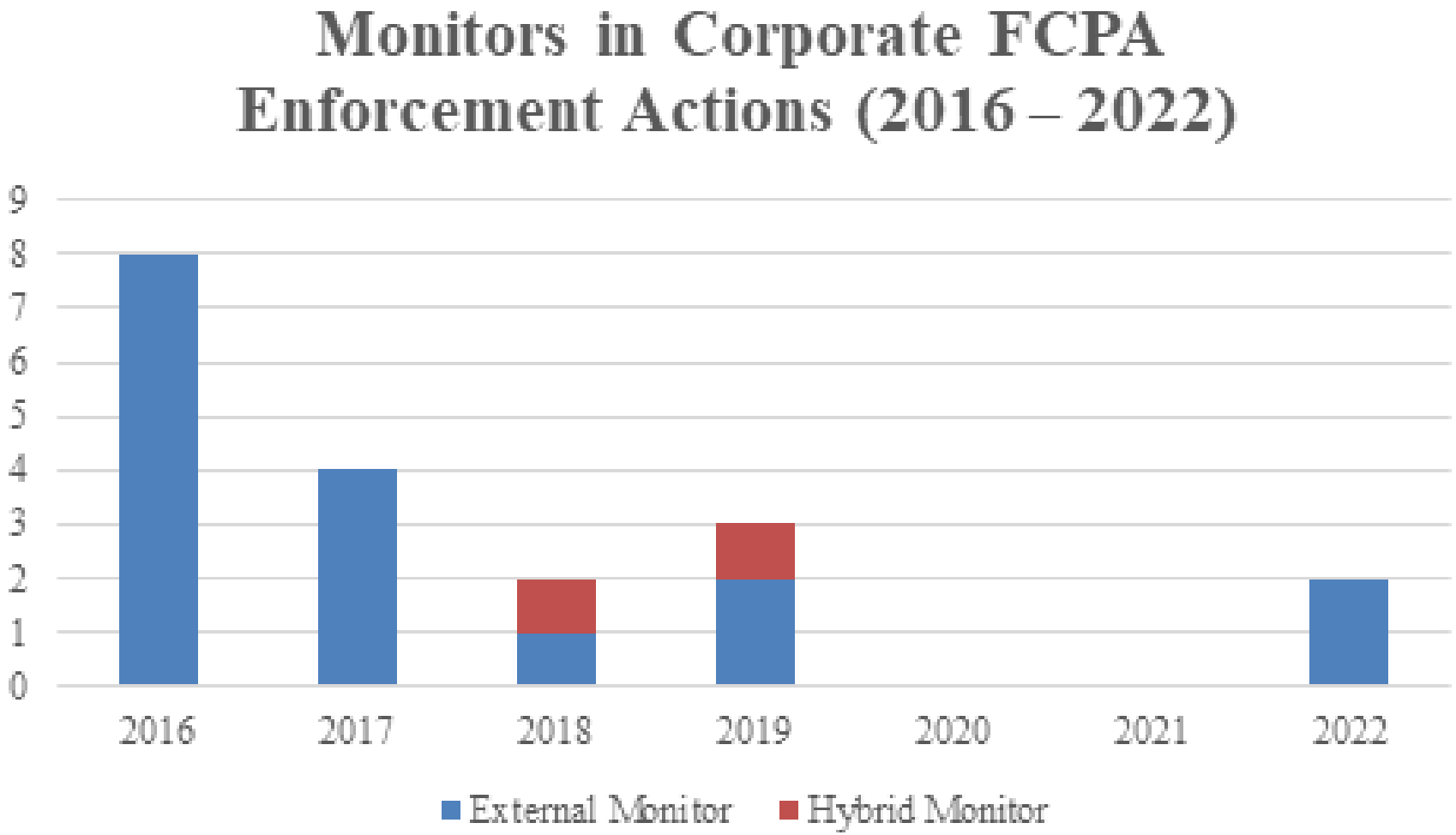
GLENCORE

• DOJ Requires Executive Certifications

with foreign officials or other activities carrying a high risk of corruption. Thirty days prior to the expiration of the Term, the Defendant, by the Chief Executive Officer and Head of Compliance of the Glencore Group, will certify to the Fraud Section, in the form of executing the document attached as Attachment H to this Agreement, that the Defendant has met its compliance obligations pursuant to this Agreement.

Thirty days prior to the end of the term of the cooperation obligations provided for in Paragraph 1 of the Agreement, the Defendant, by the Chief Executive Officer of the Defendant and the Chief Financial Officer of the Defendant, will certify to the Offices, in the form of executing the document attached as Attachment G to this Agreement, that the Defendant has met its disclosure obligations pursuant to this Paragraph. Each certification will be deemed a material statement and representation by the Defendant to the executive branch of the United States for purposes of 18 U.S.C. §§ 1001 and 1519, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

Increase in Corporate Monitors in FCPA Enforcement Actions



- On April 20, 2022, DOJ and SEC announced resolutions with Illinois-based waste management company Stericycle to resolve FCPA bribery and accounting charges arising from allegations of corruption in Argentina, Brazil, and Mexico.
- According to the resolution documents, between 2011 and 2016, Stericycle representatives allegedly paid ~$10.5 million in bribes to government officials to obtain contracts and other benefits that cumulatively netted the company ~$21.5 million in profits.
- Accordingly to DOJ, an executive at Stericycle's Latin America division directed employees in Stericycles offices in Brazil, Mexico, and Argentina who paid bribes calculated as a percentage of the underlying contract payments owed to Stericycle from government customers.

U.S. Penalties

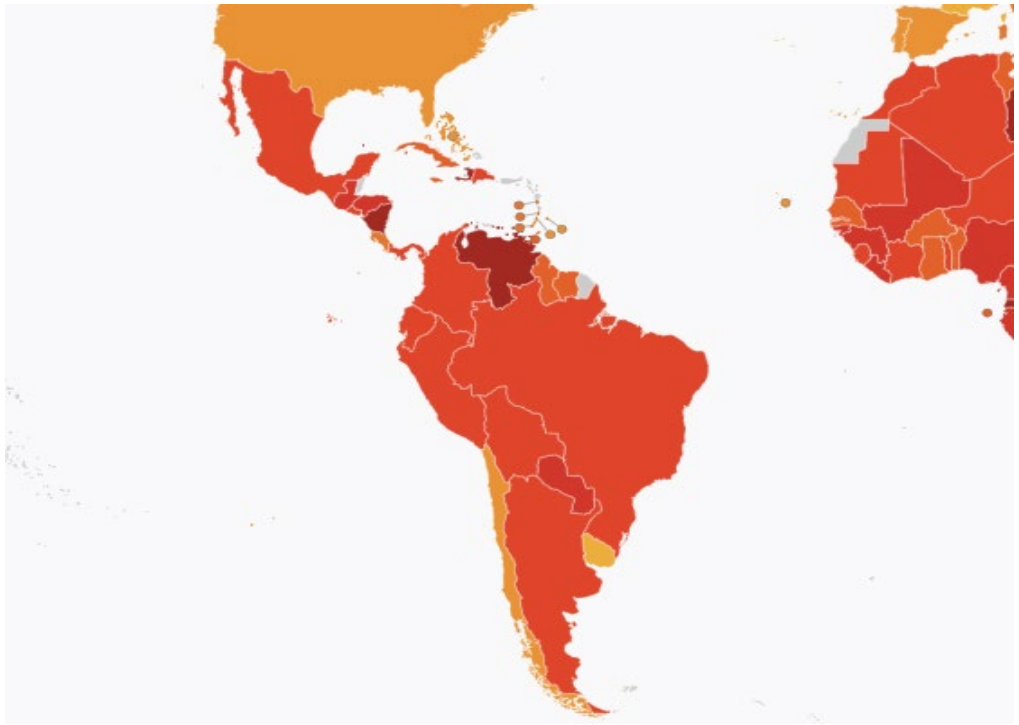
- **DOJ: DPA with $52.5 million penalty.**
- **SEC: Disgorgement of ~$28 million** in profits and prejudgment interest.
- , Stericycle's resolutions with DOJ and the SEC require **a compliance monitorship for two years.**

Foreign Penalties

- Stericycle entered into a parallel **$9.3 million resolution with Brazil's Controladoria-Geral da União and the Advocacia-Geral de União.**

Latin America Enforcement Focus

- Several of the corporate FCPA resolutions arose from alleged conduct in Brazil.
    - Glencore, Stericycle, Honeywell, GOL, and Tenaris.
- Several of the individual FCPA and FCPA-related enforcement actions stemmed from alleged conduct in Venezuela and Ecuador, largely associated with continued enforcement involving PDVSA, Suguros Sucre, Vitol, and Petroecuador.



On December 19, UOP, LLC d/b/a Honeywell UOP ("Honeywell UOP") along with Honeywell International, Inc. (which was not a defendant), agreed to pay $202.7 million to resolve parallel investigations by DOJ, SEC, and Brazilian prosecutors in relation to FCPA violations.

According to the resolution documents, Honeywell UOP worked with a Brazilian oil and gas consulting firm to pay approximately $4 million to an official at Petroleo Brasileiro, S.A., ("Petrobras") between 2010 and 2014 to win a $425 million contract to build an oil refinery.

The SEC investigation involved additional conduct in Algeria, where Honeywell's Algerian subsidiary allegedly bribed an official connected to Algeria's state-run oil company, known as Sonatrach.

DOJ Resolution

- **Criminal Penalty**: $79.2 million (up to half of which could be credited toward fulfilment of this obligation if timely paid to the Brazilian authorities)
- **Forfeiture**: $105.7 million in total forfeitures (the entirety of which would be deemed paid upon Honeywell's fulfillment of its payment obligations in connection with concurrent resolutions with the SEC and Brazilian authorities)

SEC Resolution

- **Civil Penalty**: No penalty due to the penalties owed to DOJ and Brazilian authorities
- **Disgorgement**: $81.2 million including pre-judgment interest (Up to $38.7 million of which would be credited based on dollar value of disgorgement paid to Brazilian authorities)

UOP
A Honeywell Company

Full Cooperation and Remedial Action

By cooperating extensively with DOJ and taking substantial remedial action, Honeywell received a 25% discount and avoided a compliance monitor.

b. the Company did not receive voluntary disclosure credit pursuant to the FCPA Corporate Enforcement Policy in the Department of Justice Manual 9-47.120, or pursuant to the Sentencing Guidelines, because it did not voluntarily and timely disclose to the Fraud Section and the Office the conduct described in the Statement of Facts;

c. the Company received full credit for its cooperation with the Fraud Section's and the Office's investigation pursuant to U.S.S.G § 8C2.5(g)(2) and the FCPA Corporate Enforcement Policy, JM § 9-4.120, by, among other things, (i) proactively disclosing certain evidence of which the Fraud Section and the Office were previously unaware; (ii) providing information obtained through its internal investigation, which allowed the government to preserve and obtain evidence as part of its own independent investigation; (iii) making detailed presentations to the Fraud Section and the Office; (iv) voluntarily facilitating interviews of employees; (v) collecting and producing voluminous relevant documents and translations to the Fraud Section and the Office, including documents located outside the United States;

e. Honeywell and its affiliates, including the Company, engaged in extensive remedial measures, including: (i) commencing remedial measures based on internal investigations of the misconduct prior to the commencement of the Fraud Section's and the Office's investigation; (ii) disciplining certain employees involved in the relevant misconduct, including terminating one employee; (iii) strengthening its anti-corruption compliance program by investing in compliance resources, expanding its compliance function with experienced and qualified personnel, and taking steps to embed compliance and ethical values at all levels of its business organization; (iv) substantially reducing its anti-corruption risk profile by taking steps to eliminate the Company's use of sales intermediaries and, in the interim, rolling out a single, automated sales intermediary due diligence tool that requires responsible managers to provide quarterly compliance certifications for all existing sales intermediaries; (v) establishing monitor and audit processes to regularly review and update the compliance program; and (vi) enhancing its internal reporting, investigations, and risk assessment processes.

Compliance Obligations Imposed on Parent Company

Compliance obligations were imposed on the parent company, Honeywell International, in addition to Defendant subsidiary.

b. Upon request of the Fraud Section and the Office, the Company and Honeywell shall designate knowledgeable employees, agents or attorneys to provide to the Fraud Section and the Office the information and materials described in Paragraph 5(a) above on behalf of the Company. It is further understood that the Company and Honeywell must at all times provide complete, truthful, and accurate information.

5. The Company and Honeywell shall cooperate fully with the Fraud Section and the Office in any and all matters relating to the conduct described in this Agreement and the attached Statement of Facts and other conduct under investigation by the Fraud Section and the Office at

c. The Company and Honeywell shall use its best efforts to make available for interviews or testimony, as requested by the Fraud Section and the Office, present or former officers, directors, employees, agents and consultants of the Company and Honeywell. This

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Fraud Section and the Office pursuant to this Agreement, the Company and Honeywell consent to any and all disclosures, subject to applicable laws and regulations, to other governmental authorities, including United States authorities and those of a foreign government, as well as the MDBs, of such materials as the Fraud Section and the Office, in their sole discretion, shall deem appropriate.

On June 2, 2022, Luxemburg-based global steel pipe supplier Tenaris, an ADR-issuer, consented to the entry of an administrative cease-and-desist order by the SEC to resolve FCPA bribery, books and records, and internal controls charges.

According to the SEC's Order, between 2008 and 2013, agents and employees of Tenaris's Brazilian subsidiary paid approximately $10.4 million in bribes to a high-ranking procurement manager at Brazil's state-owned oil and gas company Petrobras to persuade the procurement manager not to open up the subsidiary's ongoing pipe supply project to competition, ultimately leading to the award of over $1 billion in contracts.

SEC Resolution

- $78 million total settlement amount
  - $25 million civil money penalty
  - ~$42.84 million in disgorgement
  - ~$10.26 million in prejudgment interest
- Self-report to the SEC for two years on the status of remediation and implementation of compliance measures related to Tenaris' compliance program and accounting controls.

DOJ

- According to a statement released by Tenaris, DOJ closed its investigation into this matter without taking action.

On September 15, 2022, GOL Linhas Aéreas Inteligentes S.A.. (“GOL”), an airline headquartered in Sao Paulo, Brazil, resolved parallel bribery investigations by criminal and civil authorities in the United States and Brazil, agreeing to pay global penalties over $41 million.

The alleged conduct involved a GOL Director who paid Brazilian officials ~$3.8 million in bribes to secure favorable legislation that substantially reduced taxes for the airline industry.

> The Director allegedly used an intermediary, who kept one-third of the money as payment, and made payments through third party consulting companies using sham contracts, which were then recorded in GOL’s books and records as legitimate expenses in the company’s books and records.

GOL entered into a three-year DPA with the DOJ for a conspiracy to violate the anti-bribery and books and records provision of the FCPA, agreed to an SEC cease-and-desist order for FCPA anti-bribery, books and records, and internal accounting control provisions, and resolved parallel charges with the Comptroller General of Brazil (CGU).

DOJ Resolution

- **Criminal Penalty**: $17 Million (up to $1.7 million of which would be credited if such payment was made to Brazilian authorities).
- Original Penalty of $87 million reduced substantially due to GOL's inability to pay

SEC Resolution

- **Disgorgement**: $24.5 Million (Up to $1.7 million of which would be credited based on dollar value or disgorgement or restitution paid to Brazilian authorities)
- Original amount of $70 million reduced substantially due to GOL's inability to pay

Full Cooperation

- The DPA noted GOL's full cooperation with the investigation, and a 25% credit was applied to the bottom of the USSG range.

b. the Company received full credit for cooperation under U.S.S.G. § 8C2.5(g)(2), because it cooperated with the Fraud Section's and Office's investigation and demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct; the Company also received credit for its cooperation pursuant to the FCPA Corporate Enforcement Policy, JM § 9-47.120 by, including: (i) timely providing the facts obtained through the Company's internal investigation—which included reviewing voluminous documents, interviewing witnesses, conducting background checks, and testing over two thousand transactions—which allowed the government to preserve and obtain evidence as part of its own independent investigation; (ii) making several factual presentations to the Fraud Section and the Office to share findings; (iii) translating key documents as needed; (iv) identifying information previously unknown to the Fraud Section and the Office; (v) making the Company's current management and employees available to the Fraud Section and the Office, including several who traveled to the United States; and (vi) collecting, analyzing, and organizing voluminous evidence and information that it provided to the Fraud Section and the Office;

8. The Fraud Section and the Office and the Company agree, based on the application of the Sentencing Guidelines, that the appropriate criminal penalty is $87,000,000. This reflects a 25 percent discount off the bottom of the applicable Sentencing Guidelines fine range.

Benefits of Remedial Efforts and Self-Reporting

GOL undertook substantial remedial efforts and agreed to reporting requirements, which led to DOJ deciding an independent monitor was not necessary

d. the Company promptly engaged in remedial measures, including: (i) conducting a comprehensive risk assessment; (ii) redesigning its entire anti-corruption compliance program; (iii) forming a compliance department and hiring a new chief compliance officer to lead it; (iv) re-evaluating and supplementing its anti-corruption policies and procedures, such as its relationship with third-party vendors and suppliers; and (v) terminating its relationships with third parties involved in the misconduct; in addition, the GOL Director[1] involved in the scheme resigned from his position and has had no role at the Company since;

e. the Company has enhanced and has committed to continuing to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment C to this Agreement (Corporate Compliance Program);

m. Based on the Company's remediation and the state of its compliance program, and the Company's agreement to report to the Fraud Section and the Office as set forth in Attachment D to this Agreement (Corporate Compliance Reporting), the Fraud Section and the Office determined that an independent compliance monitor was unnecessary.

Company's Inability to Pay Substantially Reduced Fines

The fines and penalties assessed by the Government were substantially reduced because the Company was able to show that higher penalties would substantially threaten its continued viability.

k. the Company met its burden of establishing an inability to pay the criminal penalty sought by the Fraud Section and the Office, despite agreeing that the proposed amount was otherwise appropriate based on the law and the facts, and fully cooperated by providing information and documents, and access to appropriate Company personnel to respond to prosecutors' inquiries. The Fraud Section and the Office, with the assistance of a forensic accounting expert, conducted an independent ability to pay analysis, considering a range of factors outlined in the Justice Department's Inability to Pay Guidance (*see* October 8, 2019 Memorandum from Assistant Attorney General Brian Benczkowski to All Criminal Division Personnel re: Evaluating a Business Organization's Inability to Pay a Criminal Fine or Criminal Monetary Penalty), including but not limited to: (i) the factors outlined in 18 U.S.C. § 3572 and the United States Sentencing Guidelines § 8C3.3(b); (ii) the Company's current financial condition; and (iii) the Company's alternative sources of capital. Based on that independent analysis, the Fraud Section and the Office determined that paying a criminal penalty greater than $17,000,000 within 90 days of the beginning of the Term would substantially threaten the continued viability of the Company;

In February 2022, KT Corporation (“KT”), South Korea’s largest telecom company, settled allegations of FCPA accounting provisions violations brought by SEC.

SEC alleged that KT lacked sufficient internal accounting controls over expenses, which enabled managers and executives to generate slush funds. KT employees then allegedly used these funds to make contributions to legislative officials in Korea who sat on committees with influence over the telecommunications industry and to Vietnamese government officials to receive contracts.

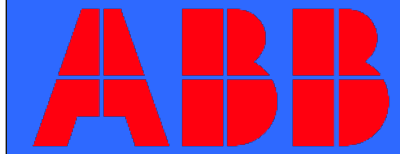
Per the resolution documents, KT had no relevant anti-corruption policies or procedures with respect to donations, employment candidates, vendors, subcontractors, or third-party agents.

- KT ageed to pay $6.3 million, consisting of a $3.5 million civil penalty and disgorgement of $2.8 million in profits plus prejudgment interest.
- KT also agreed to self-report to the SEC every six months for two years regarding the status of its remediation and implementation of compliance measures.
- KT along with 14 executives were charged in Korea in 2021 in connection with the same alleged activity.

Swiss-based global technology company ABB Ltd. and DOJ reached a resolution for alleged violations of the FCPA. ABB allegedly bribed a South African government official who served as a high-ranking employee at Eskom Holdings Ltd., South Africa's state-owned energy company, in exchange for being awarded multiple contracts.

> According to DOJ, this was DOJ's "first coordinated resolution with authorities in South Africa" and also involved working with prosecutorial authorities in Switzerland and the U.S. Securities and Exchange Commission.

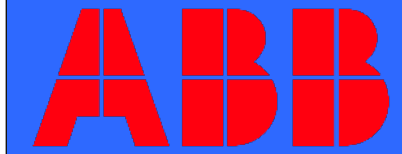
ABB and its subsidiaries, ABB Management Services Ltd. (in Switzerland) and ***ABB*** South Africa (Pty) Ltd. (in South Africa), have each pled guilty to violations of the FCPA, and ABB agreed to pay over $315 million.



No Voluntary Disclosure Credit Following Media Reporting

ABB contacted DOJ to schedule a meeting shortly after becoming aware of the South Africa allegations, but without describing the content of that disclosure in its initial contact. Between the initial call and the scheduled meeting with DOJ, the media reported on the subject-matter of the investigation, making DOJ aware of it prior to ABB's disclosure.

Accordingly, DOJ did not grant ABB voluntary disclosure credit under the FCPA Corporate Enforcement Policy, although it asserts that it considered ABB's "demonstrated intent to disclose the misconduct" in fashioning other aspects of the resolution, including by allowing the company to resolve via DPA rather than requiring a guilty plea.



DOJ Recidivist Impact

In 2004, ABB paid USD 16.4 million to DOJ and SEC to settle FCPA charges alleging that it bribed government officials in Nigeria, Angola, and Kazakhstan. In 2010, ABB paid $58 million to settle charges related to allegations of bribing Mexican officials. DOJ highlighted this prior, similar conduct to justify applying the 25% credit to the middle of the USSG range.

e. Calculation of Fine Range.

Base fine	$150,000,000
Multipliers	1.6 (min) / 3.2 (max)
Fine range	$240,000,000 (min) / $480,000,000 (max)

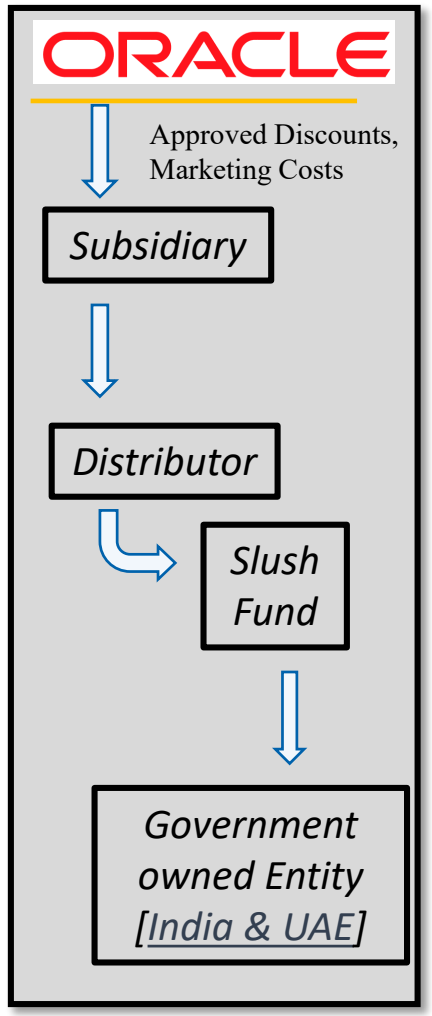
The Company agrees to pay a total monetary penalty in the amount of $315,000,000 (the "Total Criminal Penalty"). This reflects a 25 percent discount off the mid-point between the middle and the high end of the otherwise-applicable Sentencing Guidelines fine range, to reflect the Company's prior criminal history. The Company and the Offices agree that the Company will

ORACLE

On September 27, Oracle Corporation ("Oracle") agreed to pay $23 million – consisting of a civil penalty of $15 million, and $8 million in disgorgement and prejudgment interest – to resolve charges with the SEC in relation to FCPA violations at several of its subsidiaries.

The SEC alleged that between 2016 and 2019, Oracle subsidiaries in Turkey, UAE, and India maintained slush funds used to bribe officials in each country in exchange for obtaining business for Oracle.

This is an example of third-party distributer risks. Here, Oracle had a three-tier approval process, involving the subsidiary employee, subsidiary approver, and an approver at Oracle HQ. Key factors included: (i) although supporting information for invoices were required, documentation was not; and (ii) discounts were justified by "increased competition," and they were not passed to customers.



SEC Recidivist Impact

In 2012, Oracle paid USD 2 million to SEC to settle FCPA charges alleging that the company created off-the-books accounts at its India subsidiary. The SEC Order highlighted this prior action for similar conduct and noted the company was aware that the indirect model used presented certain known risks.

2. **Oracle Corporation** is a multinational information technology company headquartered in Austin, Texas. Oracle's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the Ticker "ORCL." Oracle employs a global workforce to service its international customers that include businesses of all sizes, government agencies, and educational institutions. On August 16, 2012, Oracle agreed to pay a $2 million penalty to settle the SEC's allegations that Oracle violated the books and records and internal accounting controls provisions of the FCPA by failing to prevent Oracle India Private Limited ("Oracle India") from keeping unauthorized side funds at distributors from 2005 to 2007.

6. While Oracle used the indirect sales model for a variety of legitimate business reasons, such as local law requirements or to satisfy payment terms, it recognized since at least 2012 that the indirect model also presented certain risks of abuse – including the creation of improper slush funds.

The Importance of Requiring Documentation

The SEC Cease-and-Desist Order highlighted many times how the lack of a requirement for proper documentation led to the violations.

employee seeking the discount. For the highest level of discounts, Oracle required the subsidiary employee to obtain approval from an Oracle headquarters designated approver. Typical discount justifications referred to budgetary caps at end customers or competition from other original equipment manufacturers. However, while Oracle policy mandated that all discount requests be supported by accurate information and Oracle reviewers could request documentary support, Oracle policy did not require documentary support for the requested discounts – even at the highest level.

original equipment manufacturers. Oracle headquarters personnel in the United States relied on the Turkey Sales Representative's claim of competition when it approved the discount, but they did not require proof. In reality, the MOI did not conduct a competitive bidding process for this contract. Instead, the MOI required any bidders that responded to the tender offer to include Oracle products in their bid.

fund for SSI officials related to a database infrastructure order ("Turkey VAR"). As with the other examples, a significant discount was approved by Oracle headquarters personnel in the United States without documentary support. A spreadsheet maintained by the Turkey

component of the deal. Due to the size of the discount, Oracle required an employee based in France to approve the request. The Oracle designee provided approval for the discount without requiring the sales employee to provide further documentary support for the request. In fact, the Indian SOE's publicly available procurement website indicated that Oracle India faced no competition because it had mandated the use of Oracle products for the project. One of the sales employees involved in the transaction maintained a

Declinations

Jardine Lloyd Thompson Group Holdings Ltd.

In March 2022, DOJ announced its first "declination with disgorgement" FCPA resolution since 2020 with UK insurance company JLT Group.

DOJ alleged that JLT Group, through an employee and its agents, paid ~$3.15 million in bribes to Ecuadorian officials between 2014 and 2016 to obtain or retain insurance contacts with Ecuadorian state-owned surety Seguros Sucre.

DOJ declined to prosecute based on JLT Group's voluntary disclosure, full and proactive cooperation, prompt and comprehensive remediation, and agreement to disgorge ~$29 million in alleged improper gains.

Safran, S.A.

In December 2022, DOJ announced a "declination with disgorgement" with French defense company Safran, arising from pre-acquisition conduct..

DOJ alleged that two subsidiaries of Safran paid millions of dollars to a consultant in China between 1999 and 2015 while knowing that the consultant was a close relative of a high-ranking Chinese government official who favorably influenced the award of train lavatory contracts to the subsidiaries.

Safran identified the conduct during post-acquisition due diligence, and took appropriate remedial action, including voluntarily disclosing to DOJ. Safran agreed to disgorge nearly $17.2 million in allegedly ill-gotten gains from the pre-acquisition misconduct.

Corsa Coal Corporation

On March 8, 2023, DOJ announced a "declination with disgorgement" with U.S. coal mining company Corsa Coal.

DOJ alleged that from 2016 to 2020, Corsa employees and agents coordinated bribes to Egyptian government officials to obtain and retain contracts to supply coal to Egyptian state-owned company Al Nasr Company for Coke and Chemicals.

DOJ declined to prosecute based on Corsa's timely voluntary disclosure, full and proactive cooperations and agreement to continue cooperating with ongoing actions, remediation, and agreement to disgorge, which due to inability to pay was $1.2 million, reduced from $32.7 million.

Declinations

- The declinations since 2022 include new certification language regarding disclosure to the Board and agreement to ongoing cooperation with DOJ, signed by a company executive.

- **Before:**

Quad/Graphics Inc. agrees and consents to the facts and conditions set forth herein:

Date: 9/23/19 BY: _____

JOEL QUADRACCI
Chairman, President and Chief Executive Officer
Quad/Graphics Inc.

- **Now:**

I have read this letter agreement and carefully reviewed every part of it with outside counsel for Corsa Coal Corporation. The Board of Directors of Corsa Coal Corporation has been advised of the terms of this letter agreement. I understand the terms of this letter agreement and, on behalf of Corsa Coal Corporation, voluntarily agree and consent to the facts and conditions set forth herein, including to pay the Disgorgement Amount and to continue to cooperate with the Government.

Date: March 9, 2023 BY: _____

Kevin Harrigan
Interim President and Chief Executive Officer
Corsa Coal Corporation

Continued Focus on Individual Enforcement Actions

- In 2022, DOJ filed or unsealed **FCPA or FCPA-related charges against 23 individual defendants,** and Attorney General Garland and Deputy Attorney General Monaco emphasized that **individual prosecutions remain the department's top priority.**
- Many of these matters stem from **longstanding investigations** involving PDVSA, PetroEcuador, Petrobras, and Vitol.
- DOJ continues to **target top-level executives** in bribery matters, e.g., bank executives Asante Berko and former Corsa Vice President Charles Hunter Hobson.
- DOJ continues to also **target foreign officials** involved in FCPA matters, e.g., former senior prosecutors from the anti-corruption division of the Venezuelan Attorney General's Office, Daniel D'Andrea Golindano and Luis Javier Sanchez Rangel,, former Mayor of Guanta, Venezuela Jhonnathan Marin, and Comptroller General of Ecuador Carlos Ramon Polit Faggioni.

GIBSON DUNN

Takeaways for Compliance Programs

Compliance Programs

DOJ's Modified Attachment C

Stricter Expectations for the Corporate Compliance Program

Strong support and rigorous adherence, demonstrated by concrete examples

Memorialized in written compliance codes, which are the duty of all employees

Addressing the company's individual circumstances and risk profile

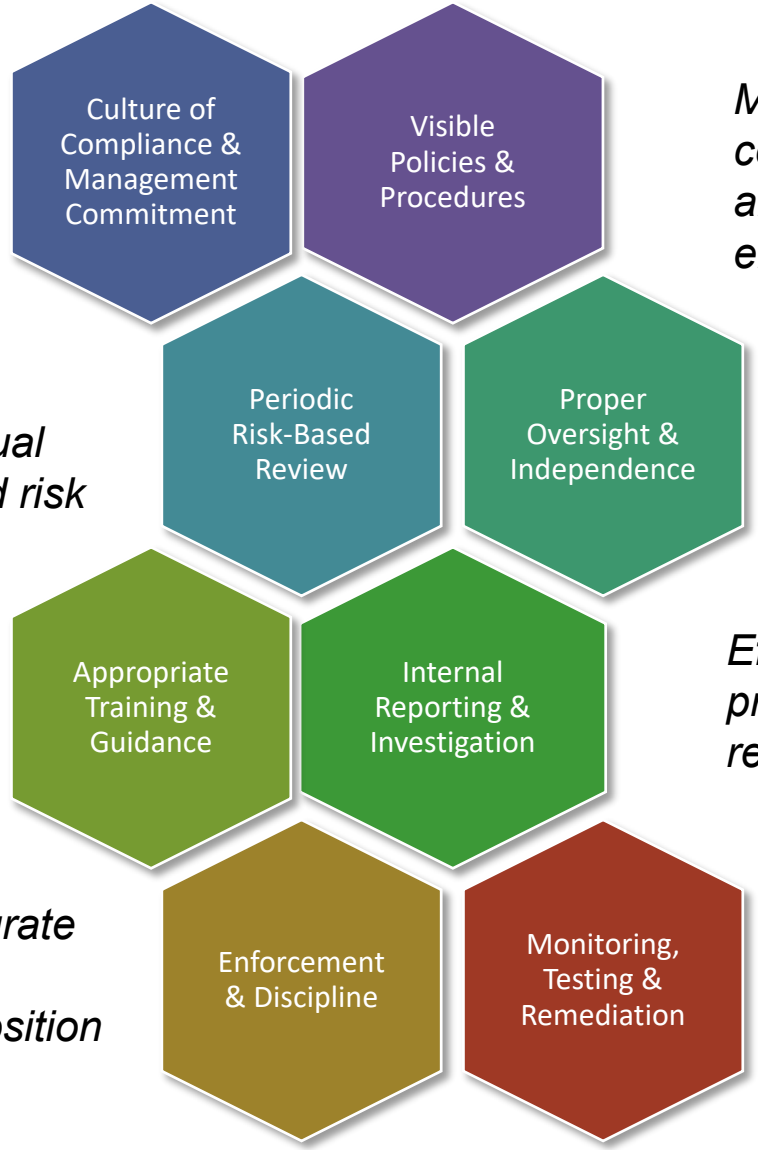
Assigned to senior executive(s) with adequate stature and autonomy

Periodic training and corresponding certifications, tailored to the audience

Effective and reliable processes, with sufficient resources available

Fair and commensurate with the violation, regardless of the position held

Emphasis on root-cause analysis and timely action



Focus on Compliance Programs, Controls, and Internal Audit

- In legislation, regulations, and enforcement decisions, authorities continue to increasingly emphasize the need for a **well-developed risk-based compliance program that is regularly tested, updated, and supported by sufficient resources.**
- Compliance programs should account for **global standards**, not just the FCPA.
- As recent U.S. enforcement actions show, **authorities will not credit companies for having internal controls if they are easily circumvented**. On the other hand, they have shown a willingness to credit the state of a compliance program after remediation following the discovery of misconduct.
- FCPA enforcement actions have also highlighted **the importance of Internal Audit and effective coordination between Internal Audit, Legal, and Compliance.**
    - Consider implementing best practices for a working relationship between internal audit, legal, and compliance.
    - Include compliance- and corruption-related areas in audit cycles.

Focus on Compliance Programs, Controls, and Internal Audit

- DOJ and the SEC regularly request and review **audit reports and internal and independent assessments.**
  - Establish guidelines to keep reports strictly factual with precise wording.
  - Ensure that remedial steps are practical and workable, and there is a process to follow through on action items.
  - Have guidelines for when to involve Legal and properly label privileged and confidential documents.
- Recent enforcement actions emphasize the need for companies to **fully address compliance red flags, risks, and recommendations flagged** by auditors, due diligence, complaints, and other creditable sources. Decisions to reject such findings or recommendations should be well-supported and fully documented.
- Government officials increasingly expect that compliance programs will be supported by **updated technology and automation**, with particular emphasis recently on the use of **data analytics for monitoring and testing a compliance program.**

Culture of Compliance and Tone from the Top

- ***Maintain*** a reputation of honesty and integrity
- ***Communicate*** a commitment to compliance
- ***Build and Resource*** a robust Compliance Organization and related controls
- ***Integrate*** compliance into the Business Units to be an accretive value-add, not a disruptive annoyance
- ***Socialize*** reporting mechanisms, including the Whistleblower Policy
- ***Executive and Board messaging*** of a commitment to compliance to entire organization

DOJ recognizes "*that enforcement alone will never be enough to eradicate corporate crime. We must also count on committed businesspeople and compliance personnel inside companies to detect and prevent misconduct.*

Putting the people, resources, and controls in place to make sure a company complies with the law is not only the right thing to do, but it ultimately helps companies operate more efficiently and profitably."

- AAG Kenneth A. Polite, 9/16/2022

Compensation Structures Encouraging Compliance

Incorporate **compensation and promotion structures that reinforce and encourage compliance** with compensation clawbacks for non-compliance.

> DOJ encourages companies to "***shape financial compensation around promoting compliance and avoiding improperly risky behavior***. *These steps include rewarding companies that claw back compensation from employees, managers, and executives when misconduct happens.* ***No one should have a financial interest to look the other way or ignore red flags***. *Corporate wrongdoers—rather than shareholders—should bear the consequences of misconduct*."
>
> -Lisa O. Monoco, DAG, 9/15/2022

Importance of Updated Risk Assessments

- Having a **properly developed risk-based risk assessment that is regularly updated is the backbone of an effective and efficient compliance program.**
- A **documented risk assessment procedure** should detail steps to review existing data, gather additional information, and analyze and report findings on a regular cadence.
    - **Sources of information should be broad across operations and jurisdictions.** They may include interviews, visits, surveys, due diligence files, audit reports, complaints, transaction data, compliance program testing and monitoring results, and so on.
    - However, more information may be sought for higher risk areas, in accordance with a risk-based approach.
- Compliance program policies, procedures, and controls should be designed and updated based on **risk assessment** findings.

Corruption Risks Associated with Third Parties

- **Third parties**—such as intermediaries, individuals and shell companies, agents, offshore entities, and distributors—**continue to pose the greatest FCPA risk** and feature in enforcement actions.
  - Higher risk third parties include those interacting with government officials, distributors and resellers, and business development agents.
  - Other high risk scenarios include: commission-based compensation, handling licensing, permits, or customs formalities, operating in jurisdictions high-risk for corruption, and engagement of subcontractors.
- **Pre-engagement diligence, compliance contract provisions, and close monitoring** can help offset the decreased transparency and control that comes with agents and intermediaries.

Corruption Risks Associated with Third Parties

BEST PRACTICES

- Identify the specific functions that are **prone to corruption** which are handled by third parties.
- Involve **Legal and Compliance** in contract negotiations/drafting to ensure that services are specifically and accurately described, and ensure that an efficient control (e.g., Finance) can assess whether the services have actually been rendered and whether prices are reasonable in light of those services and in line with market rates.
- Include **audit rights with a trigger** in third-party agreements to allow for audits when indicated.
- Conduct **specific training** for employees working with third parties and with end customers.
- Use a risk-based approach to periodically select third parties for an **audit review**.
- Ensure that **rebates, credit notes, and other payments** provided to the third party are made to the contracting entity, including identifying any offshore arrangements.
- Understand the **interaction** in emerging markets between sales force, third parties (e.g., distributors, agents) and end-customers, and conduct function-specific compliance training with these employees.
- Understand whether margins of intermediaries are **passed on** to end-customers by reviewing publicly available tender materials or conducting audit reviews.

Ensure Proactive Disclosure, Cooperation, and Remediation

"A history of misconduct will not mean a guilty plea for a company that self-discloses, cooperates, and remediates unless other aggravating factors – aside from recidivism – are present."

Acting Principal Deputy Assistant Attorney General Nicole M. Argentieri, December 2022

- **Demonstrate the intent to voluntarily disclose the misconduct promptly.**
  - Although DOJ met with ABB after the South African press reported on the allegations, DOJ factored in ABB's call to set up the meeting, which was before the press release and soon after discovery of the alleged misconduct.
  - SEC took into consideration Oracle's self-reporting of "certain unrelated conduct."
- **After voluntary disclosure, ensure full cooperation, including:**
  - Sharing facts developed in the company's internal investigations;
  - Providing translations of key documents in foreign languages; and
  - Facilitating the authorities' requests to interview current and former employees in the U.S. and foreign subsidiaries.
- **Present extensive remediation plan and the actions taken up to date, including:**
  - Root-cause analysis of the misconduct;
  - Significant investments in compliance personnel, testing, and monitoring across the company; and
  - Enhanced compliance program designed, implemented, and enforced to detect effectively FCPA and other anti-corruption law violations.

Gibson Dunn Programs & Resources

Recent Programs

- Bank Secrecy Act / Anti-Money Laundering and Sanctions Enforcement and Compliance Update (Webcast)
- FCPA Trends in the Emerging Markets (Webcast)
- Internal Investigations (Webcast)

Resources

- 2022 Year-End FCPA Update
- 2022 Mid-Year FCPA Update
- Gibson Dunn FCPA Practice Group
- Gibson Dunn Webcasts
- Subscribe to Gibson Dunn Alerts

GIBSON DUNN

Attorney Bios

EDUCATION

University of Virginia
Juris Doctor

University of Virginia
Bachelor of Arts

SELECTED RECOGNITION
Leading Lawyer: FCPA
- Chambers USA; Chambers Global

1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
T +1 202.955.8504
pstokes@gibsondunn.com

Patrick F. Stokes

Partner / Washington, D.C.

Patrick Stokes is a litigation partner in Gibson, Dunn & Crutcher's Washington, D.C. office. He is the co-chair of the Anti-Corruption and FCPA Practice Group and a member of the firm's White Collar Defense and Investigations, Securities Enforcement, and Litigation Practice Groups.

Mr. Stokes' practice focuses on internal corporate investigations, government investigations, enforcement actions regarding corruption, securities fraud, and financial institutions fraud, and compliance reviews. He has tried more than 30 federal jury trials as first chair, including high-profile white-collar cases, and handled 16 appeals before the U.S. Court of Appeals for the Fourth Circuit. Mr. Stokes regularly represents companies and individuals before DOJ and the SEC, in court proceedings, and in confidential internal investigations. Mr. Stokes is recognized by *Chambers Global* and *Chambers USA* as a leading FCPA practitioner.

Prior to joining Gibson Dunn, Mr. Stokes spent nearly 18 years with the U.S. Department of Justice (DOJ). From 2014 to 2016 he headed the FCPA Unit, managing the DOJ's FCPA enforcement program and all criminal FCPA matters throughout the United States, covering every significant business sector, and including investigations, trials, and the assessment of corporate anti-corruption compliance programs and monitorships. Mr. Stokes also served as the DOJ's principal representative at the OECD Working Group on Bribery working with law enforcement and policy setters from 41 signatory countries on anti-corruption enforcement policy issues.

From 2010 to 2014, he served as Co-Chief of the DOJ's Securities and Financial Fraud Unit. In this role, he oversaw investigations and prosecutions of financial fraud schemes involving market manipulation, accounting fraud, benchmark interest rate manipulations, insider trading, Troubled Asset Relief Program (TARP) fraud, government contract and procurement fraud, and large-scale mortgage fraud, among others. Mr. Stokes also led the successful prosecution of one of the largest bank and securities fraud cases to come out of the financial crisis.

Mr. Stokes' full biography can be viewed here.

EDUCATION

Georgetown University
Juris Doctor

University of Maryland
Bachelor of Arts

SELECTED RECOGNITION
Government Contracts Rising Star
White Collar Defense Rising Star
- Law360; National Law Journal

1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
T +1 202.887.3788
jchesley@gibsondunn.com

John W.F. Chesley

Partner / Washington, D.C.

John Chesley is a litigation partner in Gibson Dunn's Washington, D.C. Office. He focuses his practice on white collar criminal enforcement and government-related litigation. He represents corporations, audit committees, and executives in internal investigations and before government agencies in matters involving the Foreign Corrupt Practices Act, procurement fraud, environmental crimes, securities violations, sanctions enforcement, antitrust violations, and whistleblower claims. He also has significant trial experience before federal and state courts and administrative tribunals nationwide, with a particular focus on government contract disputes.

Mr. Chesley served as the Interim Chief Ethics & Compliance Officer of a publicly-traded, multi-national corporation, responsible for managing a global team of compliance personnel. In this role, Mr. Chesley conducted and oversaw internal investigations, managed a whistleblower hotline, provided compliance advice, created and updated compliance policies, and administered compliance training for tens of thousands of employees worldwide. This opportunity provided Mr. Chesley with first-hand insights into the day-to-day challenges experienced by in-house counsel, which he uses to bring practical solutions to the table for all of his clients.

Mr. Chesley has been recognized repeatedly as one of the leading lawyers of his generation. Specifically, he was named one of the "world's leading young investigations specialists" by *Global Investigations Review* "40 Under 40," as well as a "Rising Star" in the Government Contracts and White Collar fields by *Law360* and *National Law Journal*, respectively. Most recently, Mr. Chesley was recognized by Washington, D.C. *Super Lawyers* as a "Top Rated White Collar Attorney." He also has been recognized by *Benchmark Litigation* as a "Future Litigation Star" in Washington, D.C. (2020) and by *Who's Who Legal* Investigations guide as a "Future Leader" in Investigations (2022).

Mr. Chesley graduated with honors from the Georgetown University Law Center in 2005, where he attended classes while working for the National Criminal Enforcement Section of the U.S. Department of Justice, Antitrust Division. He received his undergraduate degree with honors from the University of Maryland in 2001 and also is a former police officer.

Mr. Chesley's full biography can be viewed here.

EDUCATION

New York University
Juris Doctor

Fordham University
Bachelor of Science

SELECTED RECOGNITION
Rising Stars
- 2023 Super Lawyers
- 2022 Super Lawyers

1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
T +1 202.887.3511
ecapone@gibsondunn.com

Ella Alves Capone

Of Counsel / Washington, D.C.

Ella Alves Capone is Of Counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher. She is a member of the White Collar Defense and Investigations, Global Financial Regulatory, Anti-Money Laundering, and Fintech and Digital Assets practice groups. Ms. Capone's practice focuses on advising multinational corporations and financial institutions on Foreign Corrupt Practices Act (FCPA), Bank Secrecy Act/anti-money laundering (BSA/AML), sanctions, consumer, and payments regulatory, corporate compliance, and enforcement defense matters.

Ms. Capone has significant experience representing clients in white collar and regulatory matters involving the Department of Justice (DOJ), Securities Exchange Commission (SEC), Financial Crimes Enforcement Network (FinCEN), Office of the Comptroller of the Currency (OCC), Office of Foreign Assets Control (OFAC), the Federal Reserve, and state financial services regulators, including the New York State Department of Financial Services (DFS). She has successfully defended global clients in multi-jurisdictional and multi-agency enforcement matters involving FCPA, AML, securities, fraud, and sanctions allegations.

A significant portion of Ms. Capone's practice entails advising clients on the implementation, enhancement, and assessment of corporate compliance programs and internal controls. Ms. Capone has particularly extensive experience advising major banks, casinos, social media and gaming platforms, marketplaces, fintechs, payment service providers, and cryptocurrency businesses on these matters and on financial services regulatory compliance. She also frequently provides clients with training on financial services regulations and corporate compliance programs, including enforcement trends, industry best practices, and regulator expectations.

In addition, Ms. Capone has significant experience working on international matters, with particular expertise in Latin America. She is fluent in Portuguese, and her representative matters include several anti-corruption and corporate compliance matters in Brazil, including the representation of Petróleo Brasileiro S.A. – Petrobras in connection with investigations by the SEC and DOJ. She is also a member of the Board of the Brazil-US 40 and Under White Collar Lawyers Initiative.

Ms. Capone's full biography can be viewed here.

EDUCATION

University of Virginia
Juris Doctor

Duke University
Bachelor of Arts

SELECTED RECOGNITION
Corporate Crime & Investigation – International Counsel
- 2023 Chambers Latin America

1050 Connecticut Avenue, N.W., Washington, DC 20036-5306
T +1 202.777.9560
bparr@gibsondunn.com

Bryan H. Parr

Of Counsel / Washington, D.C.

Bryan Parr is of counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher and a member of the White Collar Defense and Investigations, Anti-Corruption & FCPA, and Litigation Practice Groups. Mr. Parr's practice focuses on white-collar defense and regulatory compliance matters around the world. Mr. Parr has extensive expertise in government and corporate investigations, including those involving the Foreign Corrupt Practices Act (FCPA) and anticorruption.

Mr. Parr has defended a range of companies and individuals in U.S. Department of Justice (DOJ), SEC, and CFTC enforcement actions, as well as in litigation in federal courts and in commercial arbitrations. In his FCPA practice, Mr. Parr regularly guides companies on creating and implementing effective compliance programs, successfully navigating compliance monitorships, and conducting appropriate M&A-related FCPA diligence and integration.

Mr. Parr is recognized as a leading corporate crime and investigations lawyer by *Chambers & Partners Latin America* for his significant activity and experience in the region. He is proficient in Portuguese, French, and Spanish, and works professionally in all three languages.

Mr. Parr represents and counsels clients in matters across a number of industries, including technology, life sciences, mining and extractive, petrochemical, and aerospace and defense industries.

Prior to joining the firm, Mr. Parr was a partner at a major international law firm. Mr. Parr graduated from the University of Virginia School of Law in 2007, where he was an editorial board member of the *Virginia Journal of International Law*. He also graduated *magna cum laude* from Duke University with a B.A. in French and Comparative Area Studies in 2002.

Mr. Parr is licensed to practice in the State of New York, the State of Massachusetts, and in the District of Columbia and is admitted to practice before various federal district and appellate courts.

Mr. Parr's full biography can be viewed here.

Our Offices

Abu Dhabi
Al Sarab Tower, Floor 11
ADGM Square, Al Maryah Island
Abu Dhabi, United Arab Emirates
+971 (0) 2 234 2600

Beijing
Unit 1301, Tower 1
China Central Place
No. 81 Jianguo Road
Chaoyang District
Beijing 100025, P.R.C.
+86 10 6502 8500

Brussels
Avenue Louise 480
1050 Brussels
Belgium
+32 (0)2 554 70 00

Century City
2029 Century Park East
Los Angeles, CA 90067-3026
+1 310.552.8500

Dallas
2001 Ross Avenue
Suite 2100
Dallas, TX 75201-6912
+1 214.698.3100

Denver
1801 California Street
Suite 4200
Denver, CO 80202-2642
+1 303.298.5700

Dubai
Building 5, Level 4
Dubai International Finance Centre
P.O. Box 506654
Dubai, United Arab Emirates
+971 (0)4 318 4600

Frankfurt
TaunusTurm
Taunustor 1
60310 Frankfurt
Germany
+49 69 247 411 500

Hong Kong
32/F Gloucester Tower, The Landmark
15 Queen's Road Central
Hong Kong
+852 2214 3700

Houston
811 Main Street, Suite 3000
Houston, Texas 77002-6117
+1 346.718.6600

London
Telephone House
2-4 Temple Avenue
London EC4Y 0HB
England
+44 (0) 20 7071 4000

Los Angeles
333 South Grand Avenue
Los Angeles, CA 90071-3197
+1 213.229.7000

Munich
Hofgarten Palais
Marstallstrasse 11
80539 Munich
Germany
+49 89 189 33-0

New York
200 Park Avenue
New York, NY 10166-0193
+1 212.351.4000

Orange County
3161 Michelson Drive
Irvine, CA 92612-4412
+1 949.451.3800

Palo Alto
1881 Page Mill Road
Palo Alto, CA 94304-1125
+1 650.849.5300

Paris
16, avenue Matignon
75008 Paris
France
+33 (0)1 56 43 13 00

San Francisco
555 Mission Street
San Francisco, CA 94105-0921
+1 415.393.8200

São Paulo
Rua Funchal, 418, 35°andar
Sao Paulo 04551-060
Brazil
+55 (11)3521.7160

Singapore
One Raffles Quay
Level #37-01, North Tower
Singapore 048583
+65.6507.3600

Washington, D.C.
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
+1 202.955.8500

GIBSON DUNN