GIBSON DUNN

January 3, 2011

2010 YEAR-END FCPA UPDATE

To Our Clients and Friends:

"FCPA enforcement is stronger than it's ever been -- and getting stronger." So declared Assistant Attorney General Lanny A. Breuer on November 16, 2010, addressing a packed audience at the American Conference Institute's 24th National Conference on the Foreign Corrupt Practices Act ("FCPA"). With a nearly two-fold increase in FCPA enforcement actions in 2010 over the prior record set just the year before, it is hard to disagree with Breuer: "[W]e are in a new era of FCPA enforcement; and we are here to stay."

This new era of FCPA enforcement activity is characterized by escalating numbers of enforcement actions, bolstered by industry-wide investigations and a focus on prosecuting individuals, and heightened levels of international anti-corruption cooperation and enforcement. Each of these trends continued in 2010, as the number of enforcement actions brought by the U.S. Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC") -- the statute's dual enforcers -- dwarfed the tally from any prior year in the statute's 33-year history. These enforcement trends are by now familiar to directors, officers, and general counsels of multinational companies, as well as to the criminal defense bar, but increasing attention from U.S. legislators portends the potential for future developments that could further heighten the focus on anti-corruption enforcement and compliance in the international business environment.

This client update provides an overview of the FCPA and a survey of FCPA enforcement activities during 2010. It also analyzes recent enforcement trends and offers practical guidance to help companies and their executives avoid or minimize liability under the FCPA. A collection of Gibson Dunn's substantial publications on the FCPA, including prior enforcement updates and more in-depth discussions of the statute's complicated framework, may be found on our FCPA Website.

FCPA Overview

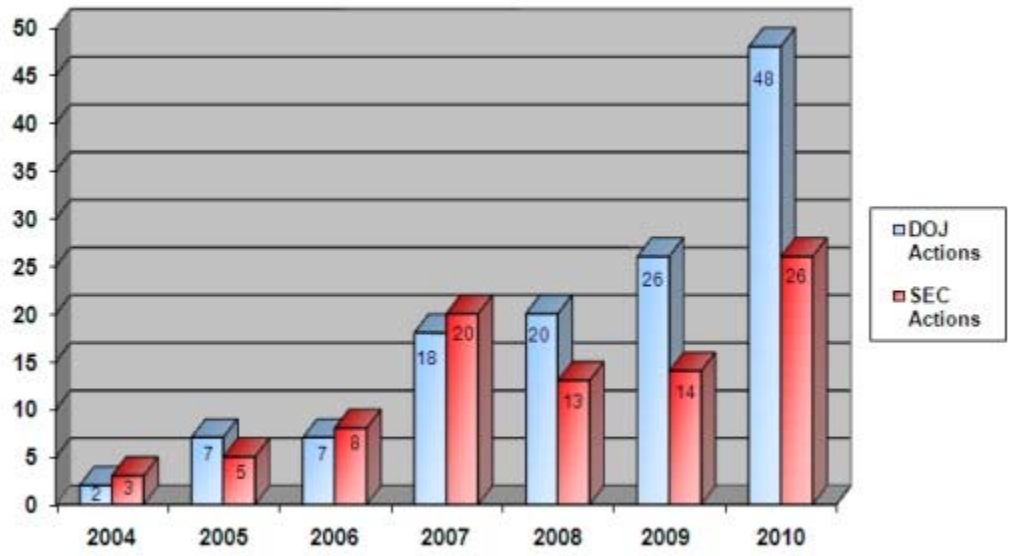
The FCPA's anti-bribery provisions make it illegal to offer or provide money or anything of value to officials of foreign governments or foreign political parties with the intent to obtain or retain business. The anti-bribery provisions apply to "issuers," "domestic concerns," and "agents" acting on behalf of issuers and domestic concerns, as well as to "any person" that violates the FCPA while in the territory of the United States. The term "issuer" covers any business entity that is registered under 15 U.S.C. § 78l or that is required to file reports under 15 U.S.C. § 78o(d). In this context, the approximately 1,500 foreign issuers whose American Depository Receipts ("ADRs") are traded on U.S. exchanges are "issuers" for purposes of this statute. The term "domestic concern" is even broader and includes any U.S. citizen, national, or resident, as well as any business entity that is organized under the laws of a U.S. state or that has a principal place of business in the United States.

In addition to the anti-bribery provisions, the FCPA's books-and-records provision requires issuers to make and keep accurate books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the issuer's transactions and disposition of assets. Finally, the FCPA's internal controls provision requires that issuers devise and maintain reasonable internal accounting controls aimed at preventing and detecting FCPA violations. Regulators have frequently invoked these latter two sections -- collectively known as the accounting provisions -- in recent years for a host of reasons, including quality of evidentiary proof or as a mechanism for compromise in settlement negotiations. Because there is no requirement that a false record or deficient control be linked to an improper payment, even a payment that does not constitute a violation of the anti-bribery provisions can lead to prosecution under the accounting provisions if inaccurately recorded or attributable to an internal controls deficiency.

2010 Enforcement Statistics

The following table and graph track the number of FCPA enforcement actions by DOJ and the SEC during the past seven years.

2004		2005		2006		2007		2008		2009		2010	
DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC	DOJ	SEC
2	3	7	5	7	8	18	20	20	13	26	14	48	26



Not only is 2010 notable for the sheer number of enforcement actions, but the monetary penalties assessed in the past year also reached historic heights. Indeed, 8 of the top 10 monetary settlements in FCPA history were reached in 2010.

There can be no question but that 2010 was yet another high-water mark for U.S. regulators charged with enforcing the FCPA. Although the level of enforcement activity has been rising steadily over the past seven years, the explosion of 2010 witnessed an 85% increase in enforcement actions over 2009, which was itself a record year. The 26 enforcement actions brought by the SEC exceeds the previous high of 20 actions in 2007, and the 48 cases filed by DOJ dwarfs last year's record 26 actions. The increased focus and resources being devoted to FCPA enforcement at both agencies, coupled with several key legislative developments, suggests that the prolific pace of FCPA prosecutions is unlikely to abate soon.

2010 Enforcement Docket and Trends

For several years now, we have reported on U.S. regulators' increasing focus on industry-wide sweeps and prosecution of individuals. These two trends, perhaps more than any other, account for the record level of enforcement activity in 2010. Indeed, 2010 produced very few "one off" prosecutions; nearly every FCPA enforcement action from the past 12 months can be traced to a multi-defendant, if not industry-wide, investigation that revealed numerous companies or persons engaged in coordinated or parallel schemes of unlawful conduct. Speaking to this trend recently, Cheryl J. Scarboro, Chief of the SEC's newly-formed FCPA Unit, said that the SEC "will continue to focus on industry-wide sweeps, and no industry is immune from investigation."

Oil and Oil Services Industry Sweep

Seismic waves rippled through the global oil and oil services industry on November 4, 2010, when DOJ and the SEC unveiled the terms of settled enforcement actions against global freight forwarder ***Panalpina World Transport (Holding) Ltd.*** and six oil and oil services firms (most of which were Panalpina customers): ***Pride International, Inc.***, ***Royal Dutch Shell plc***, ***Transocean, Inc.***, ***Tidewater Marine International, Inc.***, ***Noble***

Corporation, and ***GlobalSantaFe Corporation***. The origin of much of this investigation relates back to February 2007, when three subsidiaries of global oil services company Vetco International Ltd. resolved FCPA charges arising from improper payments made on their behalf by Panalpina. In the wake of the Vetco settlement, on July 2, 2007, DOJ sent letters to 11 oil and oil services companies, requesting information about their dealings with Panalpina.

This investigation typifies the industry sweep approach undertaken by DOJ and the SEC in recent years. They began their investigation by examining the suspected misconduct of one company and then expanded the probe to other companies in the industry and its supply chain, suspecting that competitors operating in the same country likely were engaging in similar misconduct.

The key allegations and terms of the settlements are as follows:

Company	Charged Conduct	Countries	Settlement Terms
Panalpina World Transport (Holding) Ltd.	From 2002-2007, caused approximately $49 million in improper payments to be made to government officials in order to circumvent import laws on behalf of its customers	Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia, Turkmenistan	DOJ • $70.56 million fine • Deferred prosecution agreement • Subsidiary guilty plea SEC • Civil complaint • $11.33 million in disgorgement and prejudgment interest
Pride International, Inc.	From 2001-2006, made improper payments totaling approximately $2 million to extend drilling contracts, obtain the release of drilling rigs and other equipment, and reduce customs duties and tax assessments	Congo, India, Kazakhstan, Libya, Mexico, Nigeria, Saudi Arabia, and Venezuela	DOJ • $32.63 million fine • Deferred prosecution agreement • Subsidiary guilty plea SEC • Civil complaint • $23.53 million in disgorgement and prejudgment interest
Royal Dutch Shell plc	From 2002-2005, paid approximately $3.5 million to subcontractors with knowledge that the funds would be passed on to Nigerian customs officials	Nigeria	DOJ • $30 million fine • Deferred prosecution agreement SEC • Administrative action

Company	Charged Conduct	Countries	Settlement Terms
			• $18.15 million in disgorgement and prejudgment interest
Transocean, Inc.	From 2002-2007, caused approximately $240,000 in improper payments to be made to Nigerian customs officials	Nigeria	DOJ • $13.44 million fine • Deferred prosecution agreement SEC • Civil complaint • $7.27 million in disgorgement and prejudgment interest
Tidewater Marine International, Inc.	From 2001-2007, reimbursed its customs broker for approximately $1.6 million in improper payments to Nigerian customs officials and made $160,000 in improper payments to Azeri tax inspectors to secure favorable tax assessments	Azerbaijan, Nigeria	DOJ • $7.35 million fine • Deferred prosecution agreement SEC • Civil complaint • $8.1 million in disgorgement and prejudgment interest • $217,000 penalty
Noble Corp.	From 2003-2007, paid approximately $79,000 to a freight forwarding agent with knowledge that the funds would be passed on to Nigerian customs officials	Nigeria	DOJ • $2.59 million fine • Non-prosecution agreement SEC • Civil complaint • $5.58 million in disgorgement and prejudgment interest
GlobalSantaFe Corp. (merged with Transocean, Inc., in 2007)	From 2002-2007, made approximately $465,000 in improper payments to customs officials through its customs brokers to obtain preferential treatment during the customs process	Angola, Equatorial Guinea, Gabon, Nigeria	DOJ • No action (likely due to deferred prosecution agreement with Transocean) SEC • Civil complaint • $3.76 million in

Company	Charged Conduct	Countries	Settlement Terms
			disgorgement and prejudgment interest • $2.1 million penalty

These seven oil and oil services settlements resulted in more than $230 million in disgorgement, fines, and penalties, and that number may increase in the future. A number of other companies that received the July 2, 2007 letter from DOJ, including Cameron International Corp., ENSCO plc, Nabors Industries, Inc., and Parker Drilling Co., have not yet announced a resolution to this matter. Only one recipient, Global Industries Ltd., has announced publicly that DOJ and the SEC have decided not to initiate an enforcement action.

Beyond demonstrating the regulators' sweeping approach to FCPA enforcement, there are a number of other notable aspects to these settlements.

- The SEC's resolution with Panalpina was a rare settlement between the Commission and a non-issuer. Generally speaking, the SEC lacks enforcement jurisdiction over companies that are not publicly traded in the United States, but it reached Panalpina by charging that it aided and abetted and acted as an agent of its U.S.-issuer customers in their violations of the statute. Aside from several recent settlements in which the SEC has charged both an issuer and one or more of its non-issuer subsidiaries (GE/Amersham/Ionics (2010), ENI/Snamprogetti (2010), and Halliburton/KBR (2009)), the only other instance in which we are aware of this tool being employed in an FCPA case is the SEC's 2001 enforcement action against KPMG Siddharta Siddharta & Harsono. SEC FCPA Unit Chief Scarboro has forewarned "[t]his is a trend [we] will see going forward." Continued use of this theory would bring many more companies within the reach of the SEC's enforcement powers.

- Assistant Attorney General Breuer has publicly declared these resolutions proof positive that DOJ affords "meaningful credit" to those companies that voluntarily disclose suspected misconduct. Noble Corp. was the only one of the six companies to resolve criminal charges that received a non-prosecution agreement, whereas the other five received deferred prosecution agreements. (Speaking at the same conference at which Breuer made his comment, DOJ Fraud Section Chief Denis J. McInerney cited Gibson Dunn's 2009 Year-End FCPA Update for the fact that DOJ rarely offers non-prosecution agreements to companies that did not voluntarily disclose the relevant misconduct to DOJ.) Noble also received a fine substantially below the low end of the range recommended by the U.S. Sentencing Guidelines.

- None of the defendants were required to hire an independent compliance monitor as a component of its settlement. Rather, each agreed to conduct a self-assessment of its compliance program and periodically report its findings to the government. This trend toward corporate self-monitoring, first noted in our 2009 Year-End FCPA

Update, provides an alternative to external compliance monitors, with greater flexibility and potentially significant cost savings for corporate defendants.

In addition to the seven settling companies, two former Pride International employees have found themselves subject to FCPA enforcement actions lodged by the SEC. On August 11, 2010, ***Joe Summers***, Pride International's former Venezuela Country Manager, settled FCPA charges with the Commission arising from his alleged authorization of two bribery schemes, between 2003 and 2005. The first scheme entailed the alleged payment of approximately $384,000 to officials of Venezuela's state oil company to secure extensions of sales contracts. The second allegedly involved a payment of approximately $30,000 in March 2003 to a Venezuelan official to obtain the release of funds owed to the company. Summers consented to the entry of a permanent injunction and agreed to pay a $25,000 fine. And two days earlier, on August 9, Bobby Benton, Pride's former Vice President of Western Hemisphere Operations, settled charges filed by the SEC in 2009. To resolve the charges, which are described in our 2009 Year-End FCPA Update, Benton consented to entry of a permanent injunction and agreed to pay a civil penalty of $40,000.

Additional Prosecutions Related to the Bonny Island, Nigeria Joint Venture

The $236.5 million in fines, penalties, and disgorgement collected in the oil and oil services settlements to date, although impressive, does not represent the largest take from an industry sweep in FCPA history, nor even in 2010. That distinction belongs to criminal and civil settlements with the participants of the Bonny Island, Nigeria joint venture consortium. As noted in our 2010 Mid-Year FCPA Update, several members of the consortium, which was formed to construct liquefied natural gas facilities, have settled with DOJ and the SEC in recent years. Most recently, on July 7, 2010, the Italian integrated energy company ***ENI S.p.A.*** and its Dutch subsidiary ***Snamprogetti Netherlands B.V.*** settled FCPA charges stemming from alleged bribes paid by the joint venture to senior Nigerian officials to obtain approximately $6 billion worth of engineering, procurement, and construction contracts. ENI and Snamprogetti jointly consented to the entry of an injunction against future FCPA violations and agreed to disgorge $125 million to the SEC, and Snamprogetti also entered into a deferred prosecution agreement with DOJ and agreed to pay a $240 million criminal fine. Other settling participants include ***Technip S.A.***, which entered into a combined $338 million DOJ/SEC settlement in June 2010, and KBR/Halliburton, which settled with the U.S. government for $579 million in 2009. This brings the total amount of penalties levied against members of the joint venture to nearly $1.3 billion. And this amount is likely to rise in the relatively near future, as JGC Corporation, the fourth and final member of the Bonny Island consortium, has acknowledged that it is "engaged in discussions [with DOJ] about a potential resolution" of the matter. These cases also are unique because KBR/Halliburton and Technip were required to retain independent compliance monitors, while ENI/Snamprogetti was not required to do so.

Ongoing Enforcement Activity Arising from the Oil-for-Food Program

Perhaps the first-ever FCPA industry sweep was the joint DOJ/SEC investigation of participants in the United Nations Oil-for-Food Program. It also has proven to be the most prolific: beginning with a February 2007 enforcement action against El Paso Corporation, the number of companies to settle FCPA charges arising from this program now totals 16, in addition to two individual defendants. We also are aware of additional Oil-for-Food investigations pending resolution. Defendants settling Oil-for-Food actions in 2010 include the following:

- ***ABB Ltd.*** -- On September 29, 2010, Swiss ADR issuer ABB resolved criminal and civil FCPA charges with DOJ and the SEC arising from two separate alleged improper payment schemes. First, six ABB subsidiaries based in Europe and the Middle East allegedly paid approximately $810,000, and agreed to pay an additional $240,000, to the Iraqi government in connection with 30 Oil-for-Food Program contracts. The second, unrelated scheme concerned a U.S.-based subsidiary of ABB that, between 1997 and 2004, allegedly paid approximately $1.9 million through various intermediaries to officials of state-owned utility companies in Mexico in exchange for approximately $90 million in contracts. (Additional FCPA cases from 2010 involving one of these state-owned utilities, Comisión Federal de Electricidad ("CFE"), are described below.)

  To resolve the criminal charges alleging conspiracies to violate the wire fraud statute and books-and-records provision of the FCPA, ABB entered into a three-year deferred prosecution agreement and agreed to pay a criminal fine of $1.9 million. Additionally, ABB's U.S. subsidiary pleaded guilty to violating and conspiring to violate the FCPA's anti-bribery provisions, and it paid a $17.1 million fine (down from the $28.5 million fine stipulated in the plea agreement, based on the finding by Judge Lynn Hughes of the U.S. District Court for the Southern District of Texas that the U.S. subsidiary was not, as DOJ had claimed, a recidivist violator of the FCPA). To settle civil charges with the SEC, ABB consented to the entry of a permanent injunction prohibiting future violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA and paid more than $39.3 million in penalties, disgorgement, and prejudgment interest.

- ***General Electric Co.*** -- On July 27, 2010, GE, represented by Gibson Dunn, settled civil charges alleging violations of the FCPA's accounting provisions arising from the participation of certain foreign subsidiaries in the Oil-for-Food Program. According to the SEC's complaint, between 2000 and 2003, two separate GE subsidiaries declined to make cash payments to the Iraqi government, but acquiesced when their third-party agent offered instead to make in-kind payments of computer equipment, medical supplies, and services to Iraq to satisfy the "after-sales-service fee" requirement in connection with four contracts. Additionally, Amersham plc and Ionics, Inc., two publicly traded issuers that were unaffiliated with GE at the time of their participation in the Oil-for-Food Program, but which

GE later acquired in 2004 and 2005, respectively, made cash payments to the Iraqi government in connection with a total of 14 transactions.

To resolve the matter, without admitting or denying the SEC's allegations, GE, Amersham, and Ionics each consented to the entry of a permanent injunction against future violations of the books-and-records and internal controls provisions of the FCPA, GE paid a civil penalty of $1 million, and all three entities collectively disgorged approximately $22.5 million in profits plus prejudgment interest. GE has confirmed publicly that DOJ closed its investigation without filing charges.

GE's settlement is noteworthy among both Oil-for-Food settlements and FCPA settlements more broadly for at least two reasons. First, GE is the only company out of 16 to settle Oil-for-Food Program-related charges that has avoided criminal prosecution. Second, this settlement marks an aggressive use of successor liability by the SEC, as GE was required to disgorge allegedly illicit profits earned by businesses independent of GE at the time of the wrongdoing.

- ***Innospec, Inc.*** -- As discussed in our 2010 Mid-Year FCPA Update, in March 2010, Innospec settled criminal and civil FCPA charges with DOJ and the SEC arising from alleged improper payments in Iraq, both during and after the Oil-for-Food Program, and in Indonesia. Innospec pleaded guilty to anti-bribery, books-and-records, and wire fraud charges, and paid a total of $40.2 million to resolve its liabilities with these agencies and with the U.K. Serious Fraud Office and the U.S. Treasury Department's Office of Foreign Assets Controls, which also filed charges as part of the global settlement.

  On August 5, 2010, Innospec's former business director, ***David P. Turner***, and third-party agent, ***Ousama M. Naaman***, resolved their own civil FCPA charges with the SEC stemming from their alleged roles in the payment schemes. Specifically, Turner allegedly made false statements to external accountants and internal auditors concerning the existence of commission payments made to Naaman and signed false Sarbanes-Oxley certifications to the external auditors stating that he was unaware of any violations of Innospec's Code of Ethics when, in fact, he knew that Naaman was paying kickbacks in Iraq and that another agent was paying bribes to Indonesian officials. Naaman is alleged to have provided after-sales-service fee payments to the Iraqi government during the Oil-for-Food Program and cash payments to Iraqi officials after the program ended to ensure that one of Innospec's competitors failed a product field test sponsored by the Iraqi Ministry of Oil.

  Turner and Naaman each consented to an injunction from future violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Naaman agreed to disgorge $877,000 in profits plus prejudgment interest and to pay a civil penalty of $438,000. Turner was compelled to disgorge $40,000 in bonuses allegedly earned as a result of the corrupt sales, but was not fined due to

his extensive cooperation with the SEC. Naaman also pleaded guilty to criminal FCPA charges on June 25, 2010, and is scheduled to be sentenced on January 26, 2011.

Tobacco Industry Settlements

On August 6, 2010, DOJ and the SEC jointly announced FCPA settlements with two major players in the tobacco processing industry: ***Universal Corporation*** and ***Alliance One International, Inc***. Each company entered into a non-prosecution agreement with DOJ, had foreign subsidiaries plead guilty to violating the FCPA's anti-bribery and books-and-records provisions, and settled civil anti-bribery, books-and-records, and internal controls charges with the SEC. Universal paid a total of $10 million to settle this matter, while Alliance One paid $19.45 million. Both companies also were required to retain an independent compliance monitor for the three-year terms of their non-prosecution agreements.

The allegations against Universal are that, between 2000 and 2004, the company paid approximately $800,000 to officials of the government-owned Thailand Tobacco Monopoly ("TTM") in order to obtain approximately $11.5 million in sales contracts for its Brazilian and European subsidiaries. It also allegedly paid $165,000 to government officials in Mozambique to secure an exclusive right to purchase tobacco from regional growers and to influence the passage of favorable legislation. Finally, the government alleged that Universal made improper payments totaling $850,000 to high-ranking Malawian officials.

With respect to Alliance One, which was formed in May 2005 through the merger of Dimon, Inc., and Standard Commercial Corporation, it is alleged that, between 2000 and 2004, its predecessor companies made improper payments in excess of $1.2 million to TTM officials to obtain more than $18.3 million in sales contracts. In addition, Dimon's subsidiaries allegedly paid monies to Kyrgyz officials to purchase tobacco for resale and made improper payments to certain tax officials to reduce tax penalties. Finally, Standard is alleged to have provided improper gifts, travel, and entertainment to certain foreign officials.

As reported in our 2010 Mid-Year FCPA Update, on April 29, 2010, four former employees of Alliance One -- ***Bobby J. Elkin, Jr.***, ***Baxter J. Myers***, ***Thomas G. Reynolds***, and ***Tommy L. Williams*** -- resolved civil FCPA charges with the SEC, with each of the defendants agreeing to entry of an injunction against future violations of the FCPA and with Myers and Reynolds agreeing to pay civil penalties of $40,000 each. On August 3, Elkin additionally pleaded guilty to a criminal FCPA conspiracy charge. Although he faced a recommended sentence of five years in prison and a fine of up to $250,000 under the U.S. Sentencing Guidelines, and although DOJ sought a 38-month prison sentence, Judge Jackson Kiser of the U.S. District Court for the Western District of Virginia sentenced Elkin to just three years of probation and a $5,000 fine. In imposing the relatively lenient sentence, Judge Kiser cited Elkin's substantial cooperation with prosecutors, payments by the CIA to government officials in Afghanistan, which informed

the "morality of the situation," and the Morton's fork that Elkin faced in having to either make the payments or lose his job.

It is undoubtedly true that 2010 saw the imposition of several lengthy sentences in FCPA cases that also involved substantial non-FCPA counts of conviction. For example, in April 2010, Charles Paul Edward Jumet was sentenced to 87 months in prison for his 2009 convictions on FCPA and false statements charges, and two of the defendants in the ongoing Haiti Teleco investigation were sentenced to 48 and 57 months, respectively, for FCPA and money laundering convictions. But there were also a number of FCPA cases in which the defendant, like Elkin, received a jail sentence substantially below that requested by DOJ.

Defendant	**Sentence Requested by DOJ**	**Sentence Imposed by the Court**
Gerald Green	10 years imprisonment (initially requested life imprisonment)	Six months imprisonment
Patricia Green	10 years imprisonment (initially requested 19.5-24.5 years imprisonment)	Six months imprisonment
Joseph T. Lukas	"[S]ubstantial sentence of imprisonment," but one below the advisory guidelines range of 37-46 months imprisonment	Two years probation
An Quoc Nguyen	Guidelines sentence of 87-108 months imprisonment	Nine months imprisonment
Kim Anh Nguyen	"[S]ubstantial sentence of imprisonment," but one below the advisory guidelines range of 70-87 months imprisonment	Two years probation
Nam Quoc Nguyen	Guidelines sentence of 168-210 months imprisonment	16 months imprisonment
Leo Winston Smith	37 months imprisonment	Six months imprisonment plus six months home detention

It is difficult to extrapolate a common theme from these sentences as imposed, for each reflects the unique circumstances of the individual defendant and alleged offense. What is clear, however, is that DOJ continues to seek substantial periods of incarceration in virtually every case.

CFE Prosecutions

One relatively new form of sweep that we saw take hold in 2010 is characterized by the prosecution of multiple defendants implicated in distinct bribery schemes involving officials who work for a single foreign government agency. As discussed above, one segment of ABB's FCPA settlement involved alleged corrupt payments to officials of CFE, a Mexican state-owned utility company.

In another set of CFE prosecutions from 2010, on August 10, FBI agents arrested ***Angela Marie Gomez Aguilar*** on a criminal complaint charging her with an FCPA anti-bribery violation as she traveled to Houston from Mexico. Ms. Aguilar later would be indicted on money laundering charges, together with her husband, ***Enrique Faustino Aguilar Noriega***, who was charged with substantive and conspiracy FCPA violations in connection with the alleged payment of bribes to a senior official of CFE. Mr. and Mrs. Aguilar were co-directors of Grupo Internacional de Asesores S.A., a sales agency outfit that represented companies doing business with CFE. According to the indictment, between 2002 and 2009, Mr. Aguilar orchestrated a scheme whereby he passed a portion of the 30% commission that Grupo received from a closely held California-based manufacturer of emergency restoration systems for power transmission lines to the senior CFE official in exchange for the official steering contracts to the California company. Payments and gifts provided to the CFE official included an 82-foot yacht, a Ferrari, payment of $100,000 in charges on the official's credit card bills, and payments to the official's relatives.

On October 21, 2010, DOJ obtained a superseding indictment charging the California company, ***Lindsey Manufacturing Company***, and two of its executives, President ***Keith E. Lindsey*** and Vice President ***Steve K. Lee***, with substantive and conspiracy FCPA violations arising from the CFE corruption scheme.

The charges against Lindsey Manufacturing represent the first time since September 2008 that a company has been indicted for FCPA violations (as opposed to negotiating a settlement). On September 15, 2010, the company indicted in September 2008, Nexus Technologies, Inc., was sentenced following its March 2010 guilty plea to FCPA anti-bribery, Travel Act, and money laundering offenses. DOJ alleged at sentencing that Nexus "literally offered a bribe on every single contract bid" over its nine-year existence. Judge Timothy Savage of the U.S. District Court for the Eastern District of Pennsylvania seemingly agreed and sentenced Nexus to the rarely imposed "corporate death penalty," finding that Nexus was a "criminal purpose organization" under Section 8C1.1 of the U.S. Sentencing Guidelines and ordering a dissolution of the organization, with all of its assets to be turned over to the court.

Telecommunications Industry Prosecutions

This year also saw a number of prosecutions centered on corruption in the telecommunications industry, principally in Latin America, but also in Africa and the Far East.

Most recently, on December 27, 2010, DOJ and the SEC announced a joint settlement with ADR issuer and telecommunications giant, ***Alcatel-Lucent, S.A.***, to resolve allegations of widespread bribery of foreign government officials. According to the charging documents, from 2002 to 2006, prior to its merger with Lucent Technologies, Inc., Alcatel S.A. used third-party agents to pay more than $8 million in bribes to government officials in Costa Rica, Honduras, Malaysia, and Taiwan in exchange for hundreds of millions of dollars worth of public sector telecommunications contracts.

To resolve the SEC's complaint, Alcatel-Lucent agreed to pay $45.4 million in disgorgement and consented to an injunction from future violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. To resolve the criminal charges, Alcatel-Lucent consented to the filing of an information charging it with violating the books-and-records and internal controls provisions, three of its subsidiaries pleaded guilty to FCPA conspiracy counts, and all of the companies paid a combined criminal fine of $92 million. The parent company's charges will be stayed for the three-year term of a deferred prosecution agreement.

This case marks just the second time in the history of the FCPA -- the first being Siemens in 2008 -- that a company has resolved criminal internal controls charges. The government was harshly critical of Alcatel's internal controls, with the SEC referring to the overall control environment as "lax" and controls over payments to third parties as "weak at best." Beyond the corrupt payment schemes described above, DOJ also accused the company of violating the internal controls provision in connection with its hiring of third-party agents in Angola, Bangladesh, Ecuador, Ivory Coast, Mali, Nicaragua, Nigeria, and Uganda. Further, the government charged that the leaders for a number of Alcatel subsidiaries and geographic regions, some of whom served on the company's Executive Committee, allegedly authorized "extremely high commission payments [to third-party agents] under circumstances in which they failed to determine whether such payments were, in part, to be funneled to government officials in violation of the FCPA." But the government also noted the substantial steps Alcatel-Lucent has taken to reform its operations post-merger, including, "on its own initiative and at a substantial financial cost, making an unprecedented pledge to stop using third-party sales and marketing agents in conducting its worldwide business."

Also notable about the Alcatel-Lucent case is that, in January 2010, Alcatel-Lucent paid $10 million to settle corruption charges filed by Costa Rican authorities, the first time in Costa Rica's history that it has recovered damages from a foreign corporation for corruption of its own government officials. In similar actions, Nigeria's Economic and Financial Crimes Commission reached several settlements with former FCPA defendants in 2010, including Siemens ($46.5 million), Halliburton ($35 million), and Snamprogetti ($32.5 million). We may see more such actions in the near future, as the U.S. Court of Appeals for the Fifth Circuit recently held in *United States v. Jeong*, 624 F.3d 706 (5th Cir. 2010), that the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions does not bar multiple prosecutions for the same conduct in different nations subject to the treaty. As William J. Stuckwisch, an Assistant

Chief in DOJ's FCPA Unit, recently noted, in today's environment, companies "face the very real risk of prosecution in multiple countries."

In another telecommunications industry case, filed just one week before the Alcatel-Lucent enforcement actions, on December 20, 2010, DOJ unsealed a 19-count indictment charging ***Jorge Granados*** and ***Manuel Caceres*** with violations of the FCPA's anti-bribery provisions and the money laundering statute. Granados and Caceres are the former CEO and Vice President of Business Development, respectively, for Miami-based telecommunications provider Latin Node, Inc. As described in our 2009 Mid-Year FCPA Update, on April 7, 2009, Latin Node pleaded guilty and agreed to pay a $2 million fine to resolve criminal FCPA charges arising from the alleged payment of approximately $2.25 million in bribes to officials of state-owned telecommunications companies in Honduras and Yemen. Granados and Caceres were charged for their roles in allegedly paying more than $500,000 to senior officials of Empresa Hondureña de Telecomunicaciones to obtain favorable per-minute connectivity rates for Latin Node's long-distance service between Honduras and the United States. According to the government, the payments, which were made between September 2006 and June 2007, were funneled through Latin Node's Guatemalan subsidiaries to conceal their true nature.

In other telecommunications industry corruption news, as reported in our 2010 Mid-Year FCPA Update, on June 29, 2010, California-based ***Veraz Networks, Inc.***, settled civil charges with the SEC alleging that it violated the FCPA's books-and-records and internal controls provisions in connection with the company's sales in China and Vietnam. Specifically, the civil complaint alleged that a third-party consultant hired by Veraz in China provided approximately $4,500 in gifts to officials of a state-owned telecommunications company and offered to pay a $35,000 bribe to obtain a contract before the offer was discovered and stopped by Veraz officials. In Vietnam, an employee allegedly used a distributor to offer unspecified amounts of improper payments to the CEO of a government-controlled telecommunications firm, and the company also allegedly reimbursed employees for "questionable expenses." Without admitting or denying the allegations, Veraz agreed to pay a $300,000 civil penalty and consented to an injunction from future violations of the FCPA's accounting provisions.

In a related case, on May 4, 2010, ***Alvin Ono*** was indicted on two counts of destruction of records and one count of obstruction of justice. According to the indictment, the SEC sent a request to Alvin Ono for documents relating to potential FCPA violations. He allegedly responded by engaging in a comprehensive effort to delete records from his computer on two separate occasions. Although Ono's employer was not identified in the indictment, a search of publicly available information reveals that he was the Manager of Asia-Pacific Sales for Veraz Networks. Ono has not, as of yet, been charged with any substantive FCPA violations.

This year also has seen the continuation of DOJ's investigation of several Florida-based telecommunications companies and their allegedly corrupt arrangements with officials of Telecommunications D'Haiti ("Haiti Teleco"), Haiti's state-owned telecommunications company and the sole provider of landline telephone services to and from the island

nation. On February 19, 2010, ***Jean Fourcand***, a third-party consultant involved in passing money from U.S. companies to a Haiti Teleco official, pleaded guilty to money laundering charges. Fourcand's guilty plea followed seven Haiti Teleco cases filed by DOJ in 2009, as reported in our 2009 Year-End FCPA Update, covering all levels of the alleged corruption, including two Haiti Teleco officials (Robert Antoine and Jean Rene Duperval), three executives of the telecommunications companies (Joel Esquenazi, Antonio L. Perez, and Carlos Rodriguez), and two other third-party consultants allegedly used as intermediaries to make improper payments (Juan Diaz and Marguerite Grandison).

Antoine, Diaz, Fourcand, and Perez have all pleaded guilty, with the first three receiving prison terms of 48 months, 57 months, and 6 months, respectively. Perez is awaiting sentencing, now scheduled for January 21, 2011. This leaves Duperval, Esquenazi, Rodriguez, and Grandison currently facing trial. The status of these cases is discussed below.

SHOT Show Sweep

No summary of FCPA enforcement in 2010 would be complete without mention of the landmark SHOT Show sting operation. On January 18, 2010, hundreds of FBI agents and City of London police officers executed 21 search warrants and arrested 22 employees of defense and security products companies -- 21 of whom were arrested at the annual SHOT Show convention in Las Vegas, Nevada -- following a massive undercover sting operation. The sting operation entailed FBI agents posing as representatives of the Gabonese Ministry of Defense and meeting with each of the defendants to organize an allegedly corrupt deal to pay nearly $1.5 million to Gabonese officials to secure a fictitious $15 million defense equipment contract. The FBI was assisted by cooperating defendant ***Richard T. Bistrong***, the former Vice President of International Sales for Armor Holdings, Inc., who, after being charged in a sealed criminal information with unrelated FCPA and export control violations, agreed to go undercover for the government and utilize his industry connections to help the FBI ensnare other defendants. On September 16, 2010, Bistrong pleaded guilty to one count of conspiring to violate the FCPA in connection with the payment of $4.4 million in kickbacks to third parties for use in bribing officials in the Netherlands, Nigeria, and the United Kingdom and one count of violating U.S. export control laws for the unlicensed transfer of body armor and helmets to Iraq. He faces up to five years in prison, as well as a $250,000 fine.

Additional details about the charges against Bistrong and his 22 co-defendants are contained in our 2010 Mid-Year FCPA Update. The current status of this litigation is discussed below.

Rounding Out the 2010 Enforcement Docket

The following cases, many of which are discussed in further detail in our 2010 Mid-Year FCPA Update, round out the balance of 2010's enforcement docket:

- ***NATCO Group, Inc.*** -- In the first FCPA case of 2010, on January 11, the SEC filed settled civil and administrative actions charging Texas-based oilfield

equipment manufacturer NATCO with violations of the FCPA's books-and-records and internal controls provisions. The SEC alleged, among other things, that employees of NATCO's branch office in Kazakhstan made two cash payments totaling $45,000 to Kazakh immigration officials in response to threats of deportation, imprisonment, and/or fines. Without admitting or denying the allegations, NATCO agreed to cease and desist from future violations of the FCPA's accounting provisions and paid a $65,000 civil penalty.

- ***Daimler AG*** -- On April 1, 2010, DOJ and the SEC announced a joint FCPA resolution with German automaker Daimler AG and three of its subsidiaries. According to court documents, over a 10-year period, Daimler and its subsidiaries funneled improper payments to government officials through internal "third-party accounts," which were on the companies' books, but controlled by third parties, subsidiaries, and affiliates. To resolve the charges, Daimler AG and a Chinese subsidiary entered into two-year deferred prosecution agreements charging each with one substantive and one conspiracy count of violating the FCPA's books-and-records provision. Two other Daimler subsidiaries, based in Russia and Germany, pleaded guilty to criminal informations charging each with substantive and conspiracy counts of violating the FCPA's anti-bribery provisions. Daimler and its subsidiaries agreed to pay a collective criminal fine of $93.6 million, in addition to Daimler's agreement to disgorge $91.4 million in purportedly ill-gotten gains to settle a related SEC complaint alleging violations of the anti-bribery, books-and-records, and internal controls provisions of the FCPA. Daimler also agreed to retain an independent compliance monitor for three years.

- ***BAE Systems plc*** -- On March 1, 2010, BAE pleaded guilty to participating in a criminal conspiracy to impair and impede the lawful functions of the U.S. government by making false statements concerning its FCPA compliance program and making payments to third-party consultants in connection with suspected bribes to government officials in the Czech Republic, Hungary, and Saudi Arabia. According to the charging documents, from the mid-1980s through 2002, BAE regularly retained "marketing advisors" to assist the company in securing sales to foreign governments and made substantial payments to these third parties with very little scrutiny as to their purpose and end use, while at the same time taking steps to conceal the payments by routing them "through various offshore shell entities beneficially owned by BAE[]." But despite what appears to be the factual predicate of an FCPA violation, BAE did not actually plead guilty to FCPA charges; instead, the charges center on alleged false statements made by the company to the U.S. Departments of Defense and State concerning the company's compliance with the FCPA. For these allegedly false statements, BAE agreed to plead guilty, pay a $400 million criminal fine, and retain an independent compliance monitor.

- ***Mercator Corp.*** -- On August 6, 2010, Mercator, a small merchant bank headquartered in New York and chaired by longtime FCPA defendant James H. Giffen, pleaded guilty to one count of violating the FCPA's anti-bribery provisions in connection with the 1999 gifting of two snowmobiles to senior officials of the

Republic of Kazakhstan. That same day, Giffen pleaded guilty to a misdemeanor tax offense in connection with his alleged failure to report a Swiss bank account on his 1996 tax return.

On November 19, 2010, Judge William H. Pauley III of the U.S. District Court for the Southern District of New York sentenced Mercator to pay a $32,000 fine and Giffen to time served and a $25 assessment. This brought to a rather unceremonious end one of the longest-running and highest-profile investigations in the history of the FCPA. Initially, Giffen had been indicted on 65 counts stemming from an alleged scheme to funnel more than $78 million to Kazakh officials to secure oilfield drilling rights for his clients. The case took a dramatic turn when Giffen unveiled an "act of state" defense, claiming that he was operating under the control and with the knowledge of the CIA and other U.S. government agencies. Although we likely will never know the full extent of this intriguing story, based on his *in camera* review of classified documents, Judge Pauley provided some corroboration for Giffen's story when he explained at sentencing that Giffen "was a significant source of information for the U.S. government and a conduit for secret communications to the Soviet Union and its leadership during the Cold War," that Giffen had "advanced the strategic interests of the United States and American businesses in Central Asia," and that he served "as a conduit for communications on issues vital to America's national interest in the region."

- ***RAE Systems, Inc.*** -- On December 10, 2010, California-based chemical and radiation detection system manufacturer RAE settled criminal and civil FCPA charges with DOJ and the SEC arising from the payment of approximately $400,000 to Chinese government officials on behalf of two of RAE's majority-owned joint ventures in China. According to the charging documents, between 2004 and 2008, the joint ventures provided their third-party agents with cash advances, generated through false or misleading invoices, portions of which were passed on to Chinese officials. RAE allegedly uncovered this practice during pre-acquisition due diligence for one of the joint ventures, but failed to implement a system of internal controls sufficient to stop the payments post-acquisition. With respect to the other joint venture, RAE allegedly failed to conduct any FCPA due diligence in connection with the transaction, and, as a result, the company continued to make improper payments following the acquisition.

  To resolve the criminal allegations, RAE entered into a non-prosecution agreement with DOJ, agreeing to pay a $1.7 million fine. DOJ cited RAE's substantial cooperation in the investigation and voluntary disclosure of the conduct as factors relevant to the decision to resolve the matter with a non-prosecution agreement. With respect to the SEC, RAE consented to the entry of a civil injunction against future violations of the FCPA's accounting provisions and agreed to disgorge $1.3 million in allegedly ill-gotten profits plus prejudgment interest.

Ongoing Criminal Litigation

SHOT Show Defendants

The FCPA's most logistically challenging case continues to lumber its way through pretrial motions practice. DOJ initially attempted to combine the trials of all defendants by alleging a single, overarching conspiracy, but Judge Richard Leon of the U.S. District Court for the District of Columbia rejected this argument, stating that he has "zero sense that there was an omnibus conspiracy." The government has since proposed splitting the defendants into four separate trial groups.

In addition to Richard Bistrong, who already has pleaded guilty, there are indications that defendant Daniel Alvirez also may be negotiating a resolution. A superseding information, usually a sign of cooperation, was filed against Alvirez in March 2010.

Other defendants, however, clearly have elected to mount a defense. Seeking to bolster their entrapment argument, which is certain to be a key issue at trial, defendants have moved for an evidentiary hearing at which the government would have to produce Bistrong and the FBI agents that managed him as an informant. In support of the motion, defendants argue that, at the direction of his government handlers, Bistrong told the sting targets that the deal with the Gabonese military was lawful and had been approved by the U.S. Department of State. Specifically, during one conversation, Alvirez asked Bistrong, "In your heart, are we doing anything wrong?" Bistrong replied, "Absolutely not." In another conversation, defendant Saul Mishkin read Bistrong a letter from his lawyer warning that the proposed transaction could violate the FCPA. Bistrong attempted to reassure Mishkin by telling him that the deal had been vetted by both the U.S. Department of State and the compliance department of one of the other companies involved. The motion remains pending with the next status hearing set for February 4, 2011.

CCI Defendants

The FCPA trial of Stuart Carson (represented by Gibson Dunn), Hong "Rose" Carson, Paul Cosgrove, David Edmonds, and Flavio Ricotti -- all former executives of Control Components, Inc. ("CCI") -- is now slated to begin on October 4, 2011. The postponement permits the defendants time to explore additional discovery concerning the 30 particular transactions that DOJ identified on August 11, 2010 pursuant to Judge James Selna's order, described in our 2010 Mid-Year Client Update, requiring DOJ to select the 30 transactions on which it will present evidence at trial in addition to the 14 transactions specifically referenced in the indictment. According to a recent status report filed by the defendants, 20 of these transactions "are new transactions not previously delineated by the government" and for which there exists only limited discovery to date.

In the meantime, discovery disputes continue to occupy the court's attention. On October 21, 2010, Judge Selna granted, in part, defendants' motion to reconsider his prior order denying their motion to compel the production of purportedly privileged documents prepared by CCI's counsel and provided to DOJ pursuant to a non-waiver agreement.

Haiti Teleco Defendants

As noted above, four defendants indicted in the government's ongoing Haiti Teleco investigation -- Jean Rene Duperval, Marguerite Grandison, Joel Esquenazi, and Carlos Rodriguez -- are approaching a February 28, 2011 trial date. Pretrial litigation has thus far been intense, with defendants filing multiple motions to dismiss the indictment, or specific counts contained therein, based on arguments relating to alleged selective and vindictive prosecution, the money allegedly laundered not being the proceeds of a specified unlawful activity, statute of limitations, spoliation of evidence, failure to state a criminal offense, and vagueness (the latter two based on the defendants' contention that employees of Haiti's state-owned telephone company are not "foreign officials" within the meaning of the FCPA and that the term "foreign official" is unconstitutionally vague). Judge Jose Martinez of the U.S. District Court for the Southern District of Florida has denied each of these motions.

Ongoing FCPA-Related Civil Litigation

For years we have been reporting on the increasingly dangerous third prong of FCPA enforcement: collateral civil litigation. But 2010, unlike any year before it, saw a marked increase in activity amongst the plaintiffs' bar. Hardly an FCPA investigation or resolution was announced during the past year that was not followed in swift succession by a press release from any number of plaintiffs' law firms that have created a cottage industry for private FCPA enforcement. Notwithstanding the fact that the FCPA does not provide for a private right of action, plaintiffs continue to shoehorn a variety of standard civil liability theories -- including securities fraud, breach of fiduciary duties, torts, and breach of contract -- into a device for recovering supposed damages stemming from suspected FCPA violations.

Selected Securities Fraud Actions

- ***SciClone Pharmaceuticals, Inc.*** -- On August 9, 2010, SciClone announced that it had been informed by DOJ and the SEC that it was under investigation for potential violations of the FCPA stemming from the company's operations in China. SciClone's stock price dropped, and, almost immediately, two federal class actions and three state court derivative lawsuits were filed against the California-based pharmaceutical company and its directors and officers. Plaintiffs alleged that the defendants violated federal securities laws by failing to implement internal controls to prevent the alleged bribery that led to the government investigations and resultant stock drop. The federal class action lawsuits were initially consolidated and then, on November 24, dismissed without prejudice by mutual agreement of the parties. It is unclear if or when the shareholders will re-file their suit.

- ***UTStarcom, Inc***. -- On August 30, 2010, the U.S. District Court for the Northern District of California approved a $30 million settlement reached by plaintiffs and California-based telecommunications firm UTStarcom. As discussed in our 2010 Mid-Year FCPA Update, UTStarcom settled FCPA charges with DOJ and the SEC

in 2009, only to immediately thereafter find itself faced with a class action lawsuit predicated on the alleged failure of its directors and officers to implement internal controls sufficient to prevent bribery of foreign officials in several Asian countries, which resulted in the aforementioned enforcement actions.

Selected Shareholder Derivative Suits

- ***Avon Products, Inc.*** -- On July 21, 2010, Avon shareholders filed a derivative complaint in the U.S. District Court for the Southern District of New York alleging that the company's Board of Directors failed to implement proper anti-corruption controls, exposing Avon to significant criminal and civil FCPA liability by allowing the company to make improper payments to Chinese officials. A separate derivative suit was filed the next day by the County of York Employees Retirement Plan, but was voluntarily dismissed so that it could be re-filed in the U.S. District Court for the Southern District of New York and consolidated with the original suit. This case continues to move forward, with the court approving both the lead plaintiff and plaintiffs' counsel on November 15, 2010.

- ***Parker Drilling Co.*** -- As briefly referenced above, Parker Drilling is one of the non-settling companies still under investigation as part of the oil services industry sweep. In June 2010, three different shareholders filed derivative suits against the company's directors in Texas state court, alleging breach of fiduciary duties. These actions were consolidated on October 15, 2010, and the court has granted a deferral until January 2011. Separately, two shareholders filed federal derivative suits in the U.S. District Court for the Southern District of Texas in August 2010, although one of these suits was dismissed voluntarily on December 19, 2010.

- ***Pride International, Inc.*** -- As reported in our 2010 Mid-Year FCPA Update, in April 2010, a group of shareholders filed a derivative suit in Texas state court alleging that Pride's directors and officers breached their fiduciary duties. Plaintiffs recently received a boost with the company's settlement with DOJ and the SEC in November 2010. A status conference for the derivative action is scheduled for January 28, 2011.

Selected Lawsuits Brought by Competitors

- ***Innospec, Inc.*** -- As described above and in our 2010 Mid-Year FCPA Update, in March 2010, Innospec settled a variety of criminal and civil foreign corruption charges here and in the United Kingdom arising from improper payment schemes in Indonesia and Iraq. The charging documents alleged, among other things, that Innospec paid bribes to Iraqi state oil officials to induce them to cause a competitor's product to fail product certification tests and to Indonesian state oil officials to induce them to delay a planned move to the same competitor's products. On July 23, 2010, that competitor, Virginia-based chemical additive producer NewMarket Corporation, filed suit in the U.S. District Court for the Eastern District of Virginia alleging a conspiracy in restraint of trade under federal

and state antitrust law and commercial bribery under both the federal Robinson-Patman Act and a similar state law. Innospec has filed a motion to dismiss that is fully briefed and pending before the court.

- ***RSM Production Corp.*** -- On July 21, 2010, the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of a lawsuit brought by RSM against Gregory Bowen, Grenada's former Deputy Prime Minister responsible for energy issues. As discussed in our 2010 Mid-Year FCPA Update, RSM's 2006 lawsuit, which alleged that Deputy Prime Minister Bowen solicited bribes from RSM and awarded contracts to RSM's competitors when it refused to pay, was dismissed on foreign sovereign immunity grounds in February 2009 by the U.S. District Court for the Southern District of New York. Also in 2010, RSM filed suit against law firm Freshfields Bruckhaus Deringer US LLP alleging that the firm violated the Racketeer Influenced and Corrupt Organizations Act in connection with its representation of Grenada during an international arbitration with RSM, which allegedly was paid for with the proceeds of bribe payments from one of RSM's competitors. Freshfields' motion to dismiss has been fully briefed and is pending before the U.S. District Court for the District of Columbia.

Selected Employment Litigation

- ***Abu Dhabi National Energy Company PJSC ("TAQA")*** -- In an odd twist on the interplay between private litigation and government investigations, TAQA, the government-owned energy holding company of the United Arab Emirates, may come under scrutiny because of an employment action brought by its former CEO. On August 27, 2010, Peter Barker-Homek filed a civil action in the U.S. District Court for the Eastern District of Michigan alleging that he was forced to resign because he spoke out against the state-owned company's unethical business practices and refused to engage in various corrupt practices, including bribery of government officials. Although no FCPA-related investigations have yet been announced, TAQA does maintain an office in the United States, which, according to Barker-Homek, handles a variety of global business functions for the company. A hearing on TAQA's motion to dismiss the suit is scheduled for January 27, 2011.

- ***Las Vegas Sands Corp.*** -- On October 20, 2010, Steven Jacobs, the former President of Macau operations for the global resort operator, Las Vegas Sands, filed suit against his employer in Clark County, Nevada. Jacobs alleges that he was wrongfully terminated for, among other reasons, refusing "improper and illegal demands" by the CEO, including that Jacobs hire a Macau-based attorney whose "retention posed serious risks under the [FCPA]." A spokesperson for the company responded to the suit: "While Las Vegas Sands normally does not comment on legal matters, we categorically deny these baseless and inflammatory allegations."

- ***Allison Transmission, Inc.*** -- On November 15, 2010, former Allison Transmission employee Stephen Lowe filed a lawsuit in Indiana state court alleging that he was improperly discharged for reporting a coworker's bribery of Chinese

officials with cash, lavish parties, and expensive gifts. Lowe further alleges that the superior who ousted him had authorized the bribes, which were allegedly paid to secure significant Beijing City Bus contracts. The company has yet to respond to the complaint, which seeks relief under Indiana's whistleblower protection law. Lowe's attorney has declined to say whether the alleged bribery has been reported to DOJ or the SEC.

- ***Sempra Global*** -- On November 4, 2010, Rodolfo Michelon, the former controller of Mexican operations for the California-based energy provider, Sempra Global, filed suit against his former employer in California state court, alleging various state retaliatory discharge claims. Michelon alleges that Sempra "regularly required [him] to transfer funds, and account for illegitimate expenditures that boiled down to bribes of government officials" and that, when he protested that such actions were inconsistent with his duties as a certified public accountant, he became the victim of a retaliatory firing that was aimed at preventing him from reporting his claims to law enforcement. Sempra, for its part, has taken Michelson head on in the media, publicly referring to him as a disgruntled former employee seeking to cash in by making "outlandishly false claims and misrepresentations." The company reports that it conducted an independent investigation under the direction of its Board of Directors, "which found Mr. Michelon's allegations to be completely without merit."

2010 DOJ FCPA Opinion Procedure Releases

By statute, DOJ must provide a written opinion at the request of an "issuer" or "domestic concern" regarding whether DOJ would prosecute the requestor under the FCPA's anti-bribery provisions for prospective (not hypothetical) conduct that the requestor is considering taking. DOJ publishes these opinions on its FCPA website, but only a party who joins in the request may authoritatively rely on it. The SEC does not itself issue FCPA opinion procedure releases, but has opted as a matter of policy not to prosecute issuers that obtain clean opinions from DOJ.

In 2010, DOJ issued three releases. The first, which is described in our 2010 Mid-Year FCPA Update, authorized a domestic concern to hire a foreign official to serve as a facility director in connection with its efforts to fulfill a U.S. government contract overseas. Notably, the requestor represented that the official's role as facility director would be distinct from his role as a government official and that the official would not be in any position to make or influence any governmental decision affecting the requester. Including the three releases issued in 2010, DOJ has now issued 55 FCPA opinion procedure releases in the statute's 33-year history.

FCPA Opinion Procedure Release 2010-02

On July 16, 2010, DOJ released its second opinion procedure release of the year. This opinion was issued in response to a request from a U.S.-based, non-profit microfinance institution that qualifies as a domestic concern under the FCPA. One of the institution's

subsidiaries in Eurasia was seeking to transform itself from a local non-profit into a licensed bank for the purpose of attracting additional capital for loan programs and increasing its services portfolio. Worried that this could result in the withdrawal of humanitarian funds from the nation, the Eurasian country required as a condition of the transformation that the non-profit subsidiary make a substantial grant to one of several local microfinance institutions identified by the government. "[C]oncerned that [a] compelled grant[] to an institution on a short list of institutions [identified by a foreign governmental agency]" might implicate the FCPA, the non-profit requestor sought DOJ's approval to permit its local subsidiary to issue a $1.42 million grant.

DOJ approved the arrangement, finding that, although the grant would be made "for the purpose of obtaining or retaining business" (*i.e.*, converting a non-profit business into a for-profit bank), the due diligence performed by the requestor coupled with controls on the grant funds make it "unlikely that the payment will result in the corrupt giving of anything of value to [foreign] officials." DOJ described in detail the extensive "three-stage due diligence process [that the requestor employed] to vet the potential grant recipients and select the proposed grantee." Specifically, the non-profit screened six potential recipients to determine the extent of the organizations' relationships with the government, any history of illegal or unethical conduct, and the organizations' ability to effectively use the grant funds. DOJ further observed that the requestor's proposal to implement stringent anti-corruption controls over the grantee's use of the funds -- including staggered payments, quarterly independent monitoring, semi-annual auditing, and contractual anti-corruption provisions -- "would ensure with reasonable certainty that the grant money ... would not be transferred to officials of the Eurasian country."

FCPA Opinion Procedure Release 2010-03

DOJ issued its third opinion procedure release of 2010 on September 1, in response to a request from another domestic concern, this one a U.S. limited partnership engaged in the development of natural resources trading and infrastructure. The partnership was interested in retaining a consultant to represent it before an agency of a foreign government, but sought DOJ's approval to do so because the consultant also was a registered agent of the foreign government and had represented ministries of the foreign government that would "play a role in discussions of the [partnership's] initiative."

To help minimize potential FCPA concerns arising from this relationship, the partnership represented to DOJ that the consultant would (1) fully disclose the extent of its relationship with the foreign government to the partnership and vice versa; (2) refuse to take on new engagements for the foreign government; (3) create a "wall" between employees representing the foreign government and those representing the partnership; (4) undertake no decisions on behalf of the foreign government; (5) confirm that none of its employees are or will become foreign officials during the term of the agreement; (6) secure written approval from the partnership before taking material action with respect to the foreign government's officials; and (7) obtain a written opinion that the dual representation is permitted under local law.

DOJ agreed not to take enforcement action based on payments by the partnership to the consultant, concluding that the consultant was not, for these purposes, a "foreign official" as defined in the FCPA. Specifically, DOJ noted that, although the consultant at times acted on behalf of the foreign government, which could in those circumstances render it a foreign official under the FCPA, the consultant was not a foreign official for the purposes relevant to the opinion request. DOJ emphasized, however, that "the proposed relationship increases the risk of potential FCPA violations" and that its opinion did not foreclose it from initiating an enforcement action if an FCPA violation occurred during the consultancy.

Legislative Developments

As the pace of FCPA enforcement activity set in the halls of the Executive Branch has accelerated in recent years, the statute has drawn increasing attention from legislative interests on Capitol Hill.

Proposed FCPA-Related Legislation

Two pieces of legislation were introduced this year that, if passed, would have far-reaching consequences for companies subject to the FCPA. Although each bill expired with the conclusion of the 111th Congress, with the reelection of both sponsors in the recent mid-term elections, watch for the potential reintroduction of these bills in the next session.

- ***Automatic Debarment from Government Contracts*** -- As described in our 2010 Mid-Year FCPA Update, on May 20, 2010, Representative Peter Welch (D-VT) introduced the ***Overseas Contractor Reform Act (H.R. 5366)***, which would mandate debarment from federal government contracting for issuers and domestic concerns "found to be in violation" of the FCPA's anti-bribery provisions. In a show of bipartisan support seldom seen of late, H.R. 5366 passed the House without opposition on September 15, 2010. The bill was then sent to the Senate, where it was referred to the Committee on Homeland Security and Governmental Affairs before it expired. But with the sails of a no-opposition vote at his back, look for Representative Welch to reintroduce this legislation in the new Congress.

- ***Certification of No FCPA Violations*** -- On July 22, 2010, Representative Gene Green (D-TX) introduced ***H.R. 5837***, which would require that, before receiving a federal contract, a person or entity must certify that neither it nor anyone acting on its behalf has violated the anti-bribery provisions of the FCPA. Ambiguities abound in this short bill, including what, if any, time limit applies (*e.g.*, must the person or entity certify that is has never violated the anti-bribery provisions in the 33-year history of the statute?) and what standard applies for determining whether the person or entity has violated these provisions (*e.g.*, what if an internal investigation uncovers a potential violation that has never been prosecuted?). The bill was referred to the House Committee on Oversight and Government Reform during the summer and saw no further action.

Congressional Consideration of FCPA Enforcement Practices and Proposed Reforms

In October 2010, in response to the rising hue and cry within the business community that heightened FCPA enforcement practices are rendering "U.S. businesses less competitive than their foreign counterparts who do not have significant FCPA exposure," the U.S. Chamber Institute for Legal Reform ("ILR") published a report outlining a number of proposed amendments to the statute. Specifically, the ILR recommended the following five changes:

1. adding an affirmative defense for companies with robust compliance programs;

2. adding a "willfulness" element for the imposition of corporate criminal liability;

3. clarifying the definition of "foreign official";

4. limiting a company's liability for acts of its foreign subsidiaries; and

5. limiting a company's successor liability for prior acts of an acquired company.

On November 30, 2010, the Senate Judiciary Subcommittee on Crime and Drugs held a hearing on the state of FCPA enforcement, which included a discussion of these proposed reforms. The Subcommittee heard testimony from one of the authors of the ILR report, who focused on ILR's recommendation for establishing a corporate compliance affirmative defense similar to that recently enacted in the U.K. Bribery Act (described below). The ILR argues that allowing a company to escape criminal liability when it can establish that those who paid bribes did so in circumvention of a robust compliance program would create a strong incentive for responsible companies to develop and implement programs designed to detect and prevent violations of the FCPA. Another interesting proposal advanced by a second private practitioner testifying before the panel concerns implementation of a corporate compliance amnesty program. Under this proposal, a company could hire an independent law firm or forensic accountant to assess its anti-corruption compliance program, with the understanding that it would disclose to the government any suspected FCPA violations uncovered during the review, undertake appropriate remedial measures, and retain a compliance monitor to conduct annual reviews. In exchange, DOJ and the SEC would grant the company amnesty from prosecution, with an out for cases of particularly flagrant or grievous violations.

The other focus of the hearing, and clearly the principal motivator for Senator Arlen Specter (D-PA) in convening the panels, was the prosecution of individual defendants for FCPA violations. Setting the tone at the outset of the hearing, Senator Specter declared that substantial monetary settlements with corporations are not sufficient to deter foreign bribery unless paired with effective prosecution of individual defendants, including lengthy prison terms for those convicted. Senator Specter specifically asked why no individual defendants were charged along with the seven companies in this year's oil and oil services settlements (although, as noted above, two employees of Pride International resolved their own FCPA enforcement actions prior to the corporate settlements). Acting Deputy

Assistant Attorney General Greg Andres, testifying on behalf of DOJ, defended the government's record of individual prosecutions, noting that DOJ has charged 50 individuals with FCPA offenses since 2009. But this was not enough to impress Senator Specter or Professor Mike Koehler, author of the widely read FCPA Professor blog. Professor Koehler asserted that hidden in DOJ's impressive recent enforcement statistics is a system with "two tiers of justice," wherein only the executives of smaller companies face prosecution, while major corporations are able to pay substantial fines and effectively shield their executives.

It is not yet clear whether the recommendations set forth in the ILR report will gain any traction with legislators. (Assistant Attorney General Breuer, in a speech delivered shortly before the Senate Subcommittee hearing, suggested that although DOJ appreciates and listens to thoughtful commentary, it is unlikely to change its enforcement practices.) As the 409-to-nil vote in the House on H.R. 5366 (described above) makes clear, the fear of being perceived as soft on corruption is an impediment to fulsome debate and consideration of what would be seen as pro-industry amendments to the statute. More likely to have an effect on FCPA enforcement activity in the near term is the Subcommittee's dissatisfaction with even record-shattering levels of prosecutions of individual defendants. Counsel representing individuals should expect to feel this pressure in the coming months and years.

Whistleblower Provisions of the Dodd-Frank Act

The legislative development of 2010 likely to have the greatest impact on FCPA enforcement is one that is not even specific to the FCPA: the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"). Dodd-Frank sets up a system of rewards and protections for whistleblowers who voluntarily provide original information about violations of the securities laws, including the FCPA. Specifically, the law prescribes a monetary reward for whistleblowers of between 10% and 30% of any monetary sanction in excess of $1 million collected in a SEC enforcement action or any related action by another agency, including DOJ. It also expands protections from retaliation for whistleblowers.

This aspect of the law has been met with harsh criticism by industry and private practitioners. Most significantly, it is argued that Dodd-Frank incentivizes employees who uncover corrupt dealings to report them directly to the SEC, bypassing internal compliance reporting mechanisms. Not only would this undermine the ability of companies to thoroughly investigate and remediate issues in-house before deciding whether they warrant a voluntary disclosure to regulators, it would also rob them of the ability to earn credit for making a voluntary disclosure. These problems are exacerbated by the distorting role that significant financial bounties will play in an individual's decision to report suspected misconduct in the first place. Some employees will inevitably report false alarms that never would have reached regulators in the absence of the monetary incentives, resulting in an uptick of costly and distracting government investigations of allegations that will ultimately prove unfounded.

The SEC purports to address these concerns in the proposed implementing rule that it issued for public comment on November 3, 2010. Indeed, the SEC's press release accompanying the proposed rule specifically stated that its goal is to "balance[] the need to encourage whistleblowers to come forward without promoting unintended consequences." Most notably, the proposal seeks to "discourage employees from bypassing their own company's internal compliance programs" by (1) preserving an employee's "place in line" for the report on the day that he or she reports the conduct to the company, provided that he or she reports the same information to the SEC within 90 days; and (2) considering "higher percentage awards for whistleblowers who first report their information through effective company compliance programs." Further, the rule proposes to bar certain categories of persons from reward eligibility, including

- "People who have a pre-existing legal or contractual duty to report their information";
- "Independent accountants who obtain information through an engagement required under the securities laws"; and
- "People who learn about violations through a company's internal compliance program or who are in positions of responsibility for an entity, and the information is reported to them in the expectation that they will take appropriate steps to respond to the violation," unless "the company does not disclose the information to the Commission within a reasonable time or acts in bad faith," in which case this category of whistleblowers are not excluded from a reward.

These mitigating proposals of the SEC are widely viewed as ineffectual. First, relating a whistleblower's SEC complaint back to the date he first reported it internally permits -- but does not incentivize or require -- him to first report the issue internally. Second, the lack of definition in the SEC's proposal to "consider" an internal report in determining the size of the whistleblower's bounty is unlikely to persuade putative whistleblowers to hand over control of their original information to company investigators. Third, and perhaps most disturbing, a person who learns of a potential violation only through the company's own investigation -- even an in-house attorney or compliance officer -- is relieved of the bar on bounty recovery if the company decides not to report the suspected misconduct. This effectively permits employees who may have only limited insight into the relevant facts to seek government review of their company's decision not to make a voluntary disclosure after analyzing the relevant circumstances in their totality. At a minimum, even if the company reaches the correct conclusion that no violation of law occurred, it will be subject to a costly, invasive, and burdensome government investigation at little or no risk to the whistleblower, who is protected by the expanded anti-retaliation provisions.

No matter how the SEC ultimately decides to implement the details of the Dodd-Frank whistleblower program, it is clear that the end result will be an increase in the number of suspected FCPA violations being brought to the attention of government regulators, either by whistleblowers directly or by companies that decide to make a voluntary disclosure because of the likelihood that a whistleblower will report the conduct anyway.

Extractive Industry Disclosure Provisions of the Dodd-Frank Act

A second provision of Dodd-Frank also may implicate future FCPA enforcement activity. The Act requires issuers engaged in "the commercial development of oil, natural gas, or minerals" -- including "exploration, extraction, processing, export, and other significant actions ... or the acquisition of a license for any such activity" -- to disclose in their annual reports the details of any payments made to the U.S. government or a foreign government in connection with their natural resource development activities. For the purposes of this section, Dodd-Frank defines "foreign government" broadly to include any department, agency, or instrumentality of a foreign government, as well as any entity owned by a foreign government, and it defines "payment" to include all non-de minimis payments of money, including taxes, royalties, fees, entitlements, and bonuses, and the provision of any other "material benefits" related to natural resource development. The information that must be disclosed about each payment includes the amount, timing, currency, recipient government, recipient government's location, the project to which the payment relates, and the business segment of the issuer making the payment. Dodd-Frank also obliges the SEC to publish an online compilation of the information provided pursuant to this new requirement.

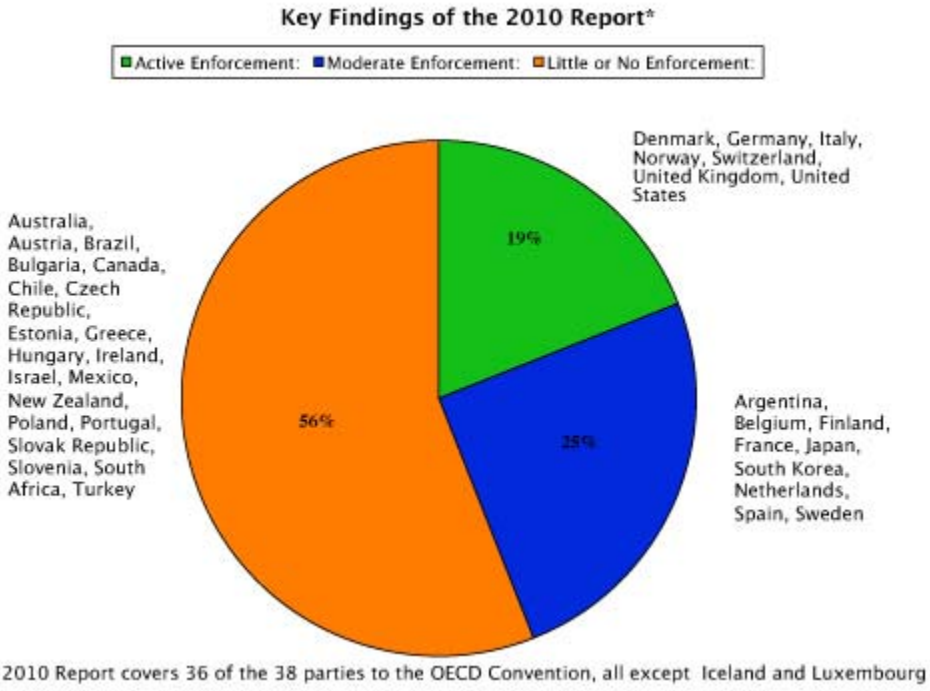
As prescribed by the Act, the SEC proposed rules to implement this disclosure requirement on December 15, 2010, and solicited comments regarding a number of issues related to the scope of the requirement. Notably, the SEC's rules take an expansive view on the definition of "foreign government," proposing that the term include foreign subnational governments and any entity in which a foreign government owns a majority stake. After the comment period closes on January 31, 2011, the SEC is expected to finalize the rules implementing the new disclosure requirement by mid-April 2011. Regardless of the ultimate scope of the requirement, issuers engaged in natural resource development activities will need to ensure that they are accurately tracking and disclosing all relevant payments. Additionally, the requirement to disclose all payments made to foreign governments might trigger even closer anti-corruption scrutiny of the natural resource development industry, which, as evidenced by the oil and oil services industry sweep, already is a target of U.S. regulators.

Worldwide Anti-Corruption Enforcement Developments

Beyond the far-flung borders of DOJ and SEC enforcement of the FCPA, regulators outside the United States also have stepped up their own anti-corruption enforcement efforts. Although the United States remains, by far, the most active cop on the global corruption beat, the trend towards internationalization of the fight against corruption continued in 2010, resulting in an increasing number of countries implementing and actively enforcing anti-graft legislation, as well as unprecedented cross-border cooperation between U.S. and foreign regulators.

Enforcement of the OECD Convention

On July 28, 2010, international anti-corruption watchdog Transparency International ("TI") announced that the number of countries with active anti-corruption enforcement programs increased from four to seven over the past 12 months. In its sixth annual progress report detailing the efforts of member states of the Organisation for Economic Co-operation and Development ("OECD") to adhere to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention"), TI reported that enforcement efforts in Denmark, Italy, and the United Kingdom expanded in 2010, resulting in "active enforcement in countries representing about 30 percent of world exports, 8 percent more than in the prior year." Although this data proves that progress is being made in the international fight against corruption, TI noted that 20 of the 38 member states who are parties to the OECD Convention continue to show little or no anti-corruption enforcement activity.



The United States' efforts to implement the OECD Convention are described in great detail in the Phase 3 Report on the U.S. Application of the OECD Convention, issued by the OECD's Working Group on Bribery in International Business Transactions on October 15, 2010. As part of its comprehensive description of the enforcement activities of U.S. regulators, the report specifically notes a trend of increased cooperation between U.S. and foreign regulators in enforcing anti-corruption laws. In particular, it documents that the United States received 31 incoming mutual legal assistance requests in foreign bribery-related cases from July 2002 to March 2010 and granted assistance in 24 of them. The OECD Working Group also commended the United States for promoting international

anti-corruption cooperation and coordination by participating in meetings with law enforcement officials from around the globe and reporting bribery cases to Eurojust, the European Union's judicial cooperation agency.

Whereas the United States has undertaken significant efforts to foster international anti-corruption enforcement cooperation, not all members have reciprocated. Indeed, the level of cooperation provided by foreign governments in response to the United States' 65 outgoing formal requests for assistance in FCPA cases has varied widely. Some of the barriers to cooperation are legal in nature, such as data privacy restrictions, the absence of dual criminality, or the inability of a foreign jurisdiction to execute a civil forfeiture order, but some foreign regulators have simply refused to respond to requests for assistance. Nevertheless, cooperation continues to increase, particularly in situations involving parallel investigations and prosecutions in different jurisdictions.

Focus on Anti-Corruption Developments in the United Kingdom

Without exaggeration, one can easily characterize 2010 as a watershed year for anti-corruption activity in the United Kingdom. With the long-awaited enactment of the Bribery Act on April 8, 2010, the United Kingdom immediately moved to the forefront of the global fight against bribery and corruption. In light of the Bribery Act's broad jurisdictional assertions, all companies that conduct any business in the United Kingdom must now endeavor to implement robust anti-bribery controls in anticipation of April 2011, when the Bribery Act will go into effect.

Overview of the Bribery Act

The Bribery Act has transformed the existing U.K. law on bribery and ranks as one of the most rigorous pieces of anti-corruption legislation worldwide. In contrast to the FCPA's complementary anti-bribery and accounting provisions, the Act creates four separate bribery offenses that address both public and private sector bribery:

- two general bribery offenses of bribing and being bribed;
- a discrete offense of bribing a foreign public official; and
- a corporate offense of failing to prevent bribery.

With respect to jurisdiction, the Bribery Act has a substantial extraterritorial reach. Indeed, for both of the general offenses and bribery of a foreign public official, any individual "closely connected" with the United Kingdom (largely U.K. companies, citizens, and residents) can be found liable under the Bribery Act. Non-U.K. nationals and entities also could be liable if any part of the offense took place in the United Kingdom. Jurisdiction to prosecute entities for failing to prevent bribery is also quite broad; the corporate offense applies to all companies and partnerships that carry on any part of their business in the United Kingdom, regardless of where they are incorporated or where the bribe was paid. Therefore a non-U.K. company that conducts any business in the United Kingdom could

be held liable under the Bribery Act, even if all of the misconduct occurred outside the country.

Penalties for violations of the Bribery Act include unlimited fines for companies and individuals and/or a term of imprisonment of up to 10 years for individual defendants.

Although companies subject to the FCPA may already have numerous anti-corruption policies and procedures in place, it is important to be aware that compliance with the FCPA does not necessarily ensure compliance with the Bribery Act. Unlike the FCPA, for example, the Bribery Act does not permit facilitation payments.

For further discussion of the provisions of the Bribery Act, please see our previous client alerts: UK Enacts New Bribery Act and 2010 Mid-Year FCPA Update.

Failing to Prevent Bribery

The centerpiece of the Bribery Act is the corporate offense for commercial organizations that fail to prevent bribery by a person "associated" with that organization. An "associated" person is one who performs services for or on behalf of the organization, which could include employees, agents, distributors, intermediaries, joint ventures, or subsidiaries. According to the U.K. Ministry of Justice, this offense "reflects a general recognition that there is an important role to be played by business itself in ensuring that commerce is undertaken in an open and transparent manner." The only available defense to a charge of failing to prevent bribery is the compliance defense. That is, an organization may avoid liability if it can show that it had implemented "adequate procedures" to prevent bribery. To help provide guidance on what would constitute "adequate procedures," the U.K. Ministry of Justice decided to delay full implementation of the Bribery Act until April 2011 and to initiate an eight-week consultation period during which the public could review and comment on draft guidance issued by the Ministry.

On September 14, 2010, the Ministry released its draft guidance, which sets forth the following six principles that should guide organizations in developing an anti-bribery compliance program:

1. regular assessments of the bribery risks faced by the organization;

2. top-level commitment from management to the prevention of bribery;

3. due diligence procedures covering all parties to the business relationship;

4. clear, practical, and accessible anti-bribery policies and procedures;

5. effective implementation of anti-bribery policies and procedures; and

6. monitoring and review mechanisms to ensure compliance.

It is expected that the Ministry will finalize its guidance early in 2011 to provide companies with sufficient time to familiarize themselves with its contents before the Bribery Act goes into effect. The Director of Public Prosecutions and the Serious Fraud Office ("SFO") also plan to issue joint guidance in early 2011 to assist criminal justice professionals.

For additional information on the U.K. government's consultation on adequate procedures and the implications of the Bribery Act for organizations, please see our previous client alerts: U.K. Bribery Act "Adequate Procedure" Draft Guidance Published and U.K. Serious Fraud Office Discusses Details of U.K. Bribery Act with Gibson Dunn.

Public Procurement

One area in which the Bribery Act may have a significant impact is public procurement. It is not yet clear how a conviction under the Bribery Act will implicate the European Union's public procurement directives, which prohibit companies convicted of corruption offenses from bidding on large public contracts. Of particular concern is the fact that companies that run afoul of the Bribery Act due to inadequate management or procedures rather than any corporate intent to bribe could be barred from bidding on European Union public procurement contracts. This risk highlights the importance of taking steps to ensure compliance with the Act before it goes into effect. The U.K. Ministry of Justice has promised to provide additional clarity regarding this issue before April 2011.

Plea Bargaining

Although the Bribery Act has not yet gone into effect, two recent cases in which the courts have expressed reluctance to approve plea agreements negotiated by the SFO suggest a potential issue that companies may have to confront if they find themselves facing charges under the Bribery Act. As described in our 2010 Mid-Year FCPA Update, in March 2010, Innospec Ltd., a U.K. subsidiary of the U.S.-based chemical manufacturer, Innospec, Inc., pleaded guilty to bribing Indonesian officials. The plea agreement negotiated with the SFO recognized Innospec Ltd.'s cooperation and prescribed a $12.7 million fine. This monetary penalty was calculated as part of Innospec's global settlement with multiple U.S. and U.K. regulators that was calibrated to avoid bankrupting the company. Although he ultimately approved the settlement, Lord Justice Thomas of the Crown Court at Southwark criticized the SFO for attempting to usurp the court's power to determine the defendant's culpability and impose an appropriate sentence. Several months later, in May 2010, Robert John Dougall, an employee of DePuy International Ltd., was sentenced for his role in a scheme to bribe Greek healthcare officials. Despite the fact that Dougall entered into a plea agreement in which the SFO recommended a suspended sentence in light of Dougall's cooperation, the court ignored the recommendation and sentenced him to 12 months in prison. The sentence was later reduced to a suspended sentence on appeal, but the appellate court emphasized that this reduction stemmed from its own analysis and that it was not constrained by the plea agreement. Both of these decisions have created uncertainty regarding the benefits of attempting to negotiate a settlement of an enforcement action with U.K. authorities. Undeterred by these developments, SFO Director Richard

Alderman has stated that although global settlements are "an issue" under existing U.K. law, he is committed to making them work "because they are what business wants and needs, and what the SFO wants and needs."

Conclusion

Without a doubt, 2010 will go down as yet another landmark year for anti-corruption enforcement, both in the United States and worldwide. As the level of enforcement activity continues its meteoric rise, multinational companies and their employees must be increasingly vigilant in conducting their business in the world's most challenging environments.

Clearly, the enforcement actions brought by DOJ and the SEC in 2010 reinforce several compliance themes for corporations: (1) close scrutiny and examination of third-party agents and distributors; (2) detailed anti-corruption due diligence; (3) the challenges of conducting business in China; and (4) awareness of industry business practices, investigations, and litigation.

Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding these issues. We have more than 65 attorneys with FCPA experience, including a number of former federal prosecutors, spread throughout the firm's domestic and international offices. Joe Warin, a former Assistant U.S. Attorney, currently serves as FCPA counsel to the first non-U.S. compliance monitor and was recently appointed compliance monitor for another company that settled FCPA charges during 2010. In 2009, he completed his compliance consultancy for Statoil A.S.A. pursuant to its DOJ and SEC FCPA settlements. Please contact the Gibson Dunn attorney with whom you work, or any of the following:

Washington, D.C.
F. Joseph Warin (202-887-3609, fwarin@gibsondunn.com)
Daniel J. Plaine (202-955-8286, dplaine@gibsondunn.com)
Judith A. Lee (202-887-3591, jalee@gibsondunn.com)
David P. Burns (202-887-3786, dburns@gibsondunn.com)
Brian C. Baldrate (202-887-3717, bbaldrate@gibsondunn.com)
Michael S. Diamant (202-887-3604, mdiamant@gibsondunn.com)
John W.F. Chesley (202-887-3788, jchesley@gibsondunn.com)
Patrick F. Speice, Jr. (202-887-3776, pspeicejr@gibsondunn.com)

New York
Joel M. Cohen (212-351-2664, jcohen@gibsondunn.com)
Lee G. Dunst (212-351-3824, ldunst@gibsondunn.com)
Mark A. Kirsch (212-351-2662, mkirsch@gibsondunn.com)
Jim Walden (212-351-2300, jwalden@gibsondunn.com)
Alexander H. Southwell (212-351-3981, asouthwell@gibsondunn.com)

Lawrence J. Zweifach (212-351-2625, lzweifach@gibsondunn.com)
Adam P. Wolf (212-351-3956, awolf@gibsondunn.com)

Dallas
Evan S. Tilton (214-698-3156, etilton@gibsondunn.com)

Denver
Robert C. Blume (303-298-5758, rblume@gibsondunn.com)
Jessica H. Sanderson (303-298-5928, jsanderson@gibsondunn.com)
Laura M. Sturges (303-298-5929, lsturges@gibsondunn.com)

Los Angeles
Debra Wong Yang (213-229-7472, dwongyang@gibsondunn.com),
the former United States Attorney for the Central District of California,
Michael M. Farhang (213-229-7005, mfarhang@gibsondunn.com)
Douglas M. Fuchs (213-229-7605, dfuchs@gibsondunn.com)
Marcellus A. McRae (213-229-7675, mmcrae@gibsondunn.com)

Orange County
Nicola T. Hanna (949-451-4270, nhanna@gibsondunn.com)
J. Scot Kennedy (949-451-3805, skennedy@gibsondunn.com)
Eric Raines (949-451-4050, eraines@gibsondunn.com)
Bryan E. Smith (949-451-4055, bsmith@gibsondunn.com)

Hong Kong
Kelly Austin (+852 2214 3788, kaustin@gibsondunn.com)
Kate Yin (+852 2214 3988, kyin@gibsondunn.com)

London
Charlie Falconer (+44 20 7071 4270, cfalconer@gibsondunn.com)
Barbara Davidson (+44 20 7071 4216, bdavidson@gibsondunn.com)

Munich
Benno Schwarz (+49 89 189 33-110, bschwarz@gibsondunn.com)
Michael Walther (+49 89 189 33-180, mwalther@gibsondunn.com)
Mark Zimmer (+49 89 189 33-130, mzimmer@gibsondunn.com)