
2015 Year-End Review: Anti-corruption Trends and Other Corporate Enforcement Issues

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Presenters



Greg Andres

Greg is a partner in our litigation department and practices in our New York office, concentrating in white collar criminal defense and representing clients in both civil and criminal trials. He has represented individuals and entities alike in a wide range of regulatory and criminal investigations involving market manipulation, insider trading, securities, procurement and tax fraud, and money laundering. He also has extensive experience in anti-corruption matters, both in private practice and at the Department of Justice; his current practice involves investigations that span the globe from China to Europe, India and Mexico. He previously served in senior government positions including most recently as a Deputy Assistant Attorney General in the Criminal Division at the Department of Justice and the Chief of the Criminal Division at the U.S. Attorney's Office in the Eastern District of New York.



Martine Beamon

Martine is a partner in our litigation department and practices in our New York office. She has represented both companies and individuals in grand jury and regulatory investigations in connection with a variety of allegations, including FCPA, insider trading, and other securities fraud. Her civil matters have involved allegations under the False Claims Act, consumer protection and whistleblower provisions, and other state and federal statutes. She also conducts internal investigations on behalf of clients facing potential criminal and regulatory exposure and has advised corporate boards of directors and subcommittees on matters of corporate governance and compliance. Martine served as an Assistant U.S. Attorney for the U.S. Attorney's Office in the Southern District of New York, where she conducted numerous investigations and criminal trials.

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Angela Burgess

Angela is a partner in our litigation department and practices in our New York office. She has represented leading clients in some of the most high-profile and complex white collar and regulatory matters in recent years. Her global practice focuses on representing companies as well as individuals in matters involving allegations of insider trading, violations of anti-bribery laws, money laundering, antitrust, fraud and other financial crimes. Angela also routinely advises boards of directors, audit committees and companies on corporate governance and compliance matters, including the design of strategies, policies and procedures to mitigate risk.



Martin Rogers

Martin is a partner in our litigation department and practices in our Hong Kong office. He is regarded as one of the market's leading litigation and financial services regulatory lawyers with over 20 years' experience in Asia, advising on complex litigation, arbitration, regulatory and white collar crime matters, with extensive experience advising leading corporations, the financial services industry and government bodies. Martin's global enforcement and litigation practice focuses on complex regulatory matters, particularly within the financial services and investment banking industry; he also advises major international and Asian financial institutions and corporations, as well as regulators. Martin is U.K.-law qualified.

Presenters



Linda Chatman Thomsen

Linda is a partner in our litigation department and practices in our Washington, DC office. Her practice concentrates on matters related to the enforcement of the federal securities laws. She returned to the firm after serving for 14 years in various positions within the SEC. Linda joined the SEC staff in 1995 as Assistant Chief Litigation Counsel. In 1997, she was named Assistant Director of the Enforcement Division. She became an Associate Director in 2000, Deputy Director in 2002 and was named Director of the Enforcement Division in 2005, a position she held until 2009.

Agenda

■ 2015 Enforcement Activity

- Overview
- Industry Spotlight: Mining
- FCPA Enforcement Focus Issues
- Summary of U.S. Enforcement Actions
- Declinations
- Global Regulatory Activity
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■ Enforcement Developments and Trends

- DOJ / SEC Enforcement Focus
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- Increased Emphasis on Individuals / Yates Memo / Compliance Professionals
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■ Appendix

- 2015 Individual FCPA Resolutions

2015 Enforcement Activity

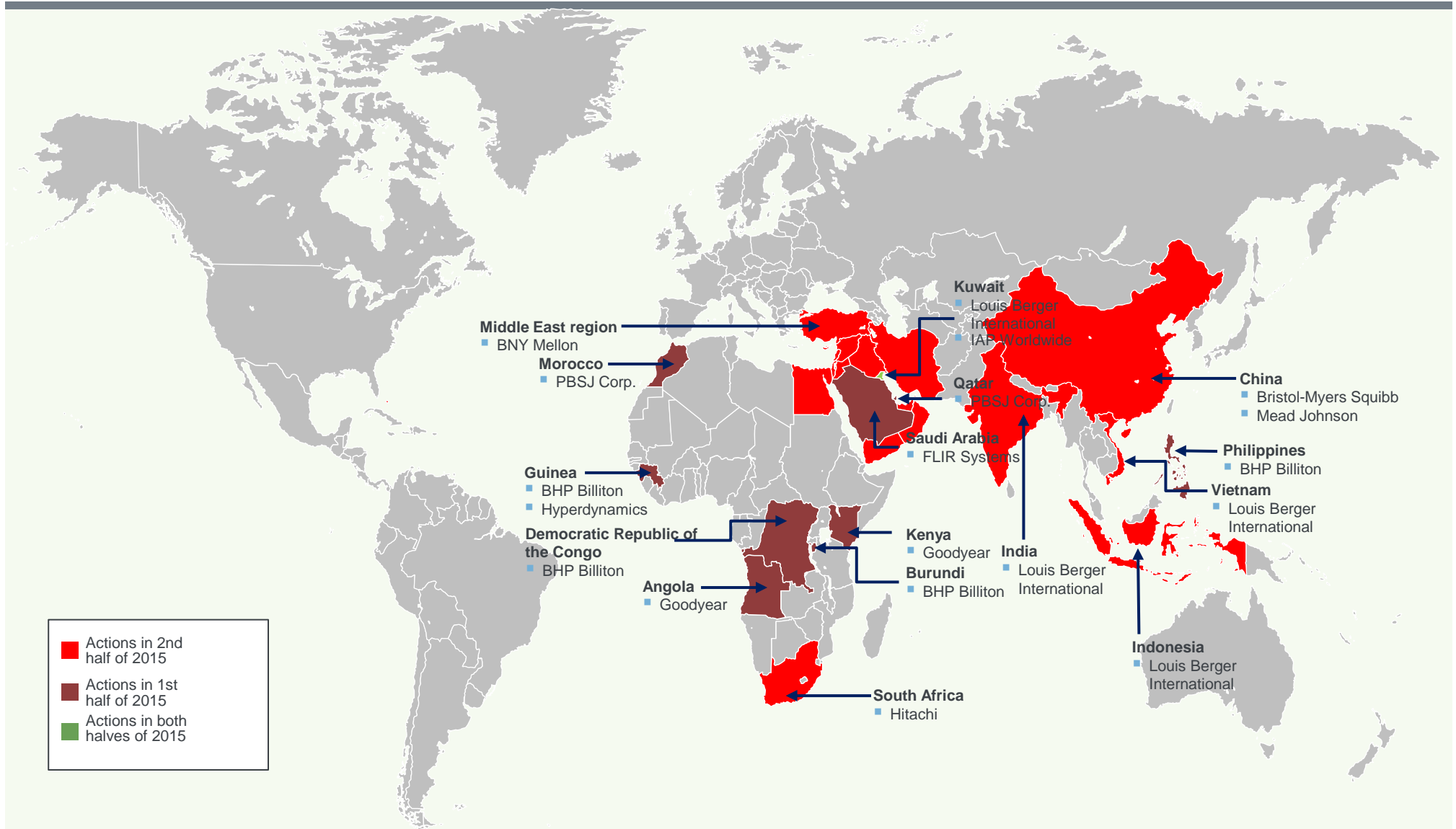
OVERVIEW

- **11 corporate FCPA resolutions** by the SEC and DOJ in 2015, totaling approx. \$140 million in penalties and disgorgement
 - 2015 total: 9 SEC (\$113.98 million) and 2 DOJ (\$24.2 million)
 - Compare:
 - First half of 2015: 4 SEC; 1 DOJ
 - Second half of 2015: 5 SEC; 1 DOJ
 - 2014 total: 7 SEC; 7 DOJ
- Note: DOJ/SEC overlap in **0** resolutions against corporate defendants in 2015
 - Sole overlap was in enforcement action against individual officer of SAP International
- As in first half of 2015, geographic focus in second half of 2015 included Africa and Asia



2015 Enforcement Activity

OVERVIEW: GEOGRAPHY



2015 Enforcement Activity

OVERVIEW: INDUSTRIES

- Industries seen in second half of 2015 include:
 - Construction (Louis Berger International Inc.)
 - Financial services (BNY Mellon)
 - Healthcare / pharmaceuticals / nutrition products (Bristol-Myers Squibb; Mead Johnson)
 - Oil and gas (Hyperdynamics)
 - Power (Hitachi)



2015 Enforcement Activity

INDUSTRY SPOTLIGHT: MINING

- Significant recent developments in enforcement relating to mining industry
 - Factors contributing to focus include
 - Frequent government interactions
 - Operation in high-risk jurisdictions
 - 2015 activity
 - May 2015: BHP Billiton \$25 million SEC settlement
 - June 2015: Gold Fields Ltd. announces closure of investigation by SEC
 - October 2015: Kinross Gold Corp. announces investigation by SEC and DOJ
 - Other recent U.S. activity: Alcoa FCPA settlement (Jan. 2014); DOJ charges against foreign nationals for paying bribes to Indian officials relating to titanium mining
- SEC to announce by summer 2016 new rules requiring oil, gas, and mining companies to disclose payments to foreign governments
 - See Oxfam America Inc. v. SEC, No. 1:14-cv-13648 (D. Mass. 2014)
- Other recent actions by U.K., Canadian, and other foreign authorities

2015 Enforcement Activity

FCPA ENFORCEMENT FOCUS ISSUES

- Compliance issues raised by 2015 enforcement actions include:
 - Third-party fees and commissions
 - IAP Worldwide
 - Louis Berger International Inc.
 - PBSJ Corp.
 - Hitachi
 - Gifts and entertainment
 - BHP Billiton
 - Bristol Myers-Squibb
 - FLIR Systems
 - Mead Johnson
 - Promotional expenses
 - Goodyear
 - Hyperdynamics
 - Internships/Employment Opportunities
 - BNY Mellon
 - Due Diligence
 - Goodyear
 - Hitachi

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

- **Louis Berger International Inc. (DOJ, July 2015):** Deferred prosecution agreement, three-year compliance monitor, and \$17.1 million penalty for Louis Berger International Inc. (“LBI”), a New Jersey-based construction management company
 - **Industry / Country:** Construction / India, Indonesia, Vietnam, and Kuwait
 - **Allegations:** LBI and its employees bribed government officials to obtain government construction management contracts with payments made under the guise of “commitment fees,” “counterpart per diems,” and other payments to third-party vendors
 - **Charges:** Bribery
 - **Individual Charges:** Two former executives pleaded guilty to conspiracy and FCPA charges, and one other has been arrested
 - **Monitorship:** Three-year compliance monitor required
 - **Cooperation and Self-Reporting:**
 - *“Among other factors, in entering into a DPA, [the DOJ] considered: (1) LBI’s self-reporting of the misconduct; (2) the company’s cooperation . . .; (3) the company’s extensive remediation . . .; and (4) the company’s demonstrated commitment to improving its compliance program and internal controls.”*

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

- **Bristol-Myers Squibb (SEC, Oct. 2015)**: \$14 million settlement for Bristol-Myers Squibb (“BMS”), a New York-based pharmaceutical company
 - **Industry / Country**: Healthcare and pharmaceuticals / China
 - **Allegations**: Sales representatives of BMS’s majority-owned joint venture in China gave cash, jewelry, travel, gifts, sponsorships, and other benefits to Chinese state-owned and state-controlled hospitals to increase prescription sales, resulting in over \$11M in profits; BMS China then recorded these as legitimate expenses
 - **Charges**: Internal controls, books and records
 - “[BMS]’s failure to institute an effective internal controls system and to respond promptly to indications of significant compliance gaps at its Chinese joint venture enabled a widespread practice of providing corrupt inducements . . . to continue for years.”
-- SEC FCPA Unit Chief Kara Brockmeyer (Oct. 2015)
 - **Self-Monitorship**: Two-year self-reporting on remediation and compliance measures
 - **DOJ Declination**

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

- **Hyperdynamics Corporation (SEC, Sept. 2015)**: Cease-and-desist order, Offer of Settlement, and \$75,000 penalty for Hyperdynamics Corporation, a Houston-based oil and gas exploration company
 - **Industry / Country**: Oil and gas / Guinea
 - **Allegations**: Hyperdynamics' Guinea-based subsidiary recorded payments as public relations and lobbying expenses to unrelated third parties; it later determined that an employee controlled the third-party entities, but did not record the payments as related-party transactions or adequately track the subsidiary's use of funds
 - **Charges**: Internal controls, books and records
 - **Cooperation and Remediation**: *“Hyperdynamics replaced its senior management team and its entire Board of Directors . . . , hired its first in-house lawyer, who implemented a number of training programs and revised company policies . . . , increased the number of its accounting personnel, and instituted a series of procedures to more strictly control and identify transfer of funds to Guinea.”*
 - **DOJ Declination**

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

- **Hitachi, Ltd. (SEC, Sept. 2015):** \$19 million settlement for Hitachi, Ltd., a Tokyo-based conglomerate
 - **Industry / Country:** Power / South Africa
 - **Allegations:** Hitachi sold a stake in its South African subsidiary to a company alleged to be a front for the African National Congress (“ANC”), thus permitting the ANC to share in profits from two power station contracts obtained by Hitachi subsidiaries, as well as “success fees” relating to the contracts
 - **Charges:** Internal controls, books and records
 - *“Hitachi’s lax internal control environment enabled its subsidiary to pay millions of dollars to a politically-connected front company for the ANC to win contracts with the South African government . . . [and] unlawfully mischaracterize[] those payments.”*
-- SEC Director of Enforcement Andrew Ceresney (Sept. 2015)
 - **Parallel public settlement with African Development Bank**

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

- **BNY Mellon (SEC, Aug. 2015)**: \$14.8 million settlement for BNY Mellon, a New York-based financial and investment services company
 - **Industry / Country**: Financial services / Middle East region
 - **Allegations**: BNY Mellon provided student internships to family members of foreign officials affiliated with a Middle Eastern sovereign wealth fund, without evaluating or hiring them through its formal internship program which had strict standards and required interviews to be conducted
 - **Charges**: Bribery, internal controls
 - **FCPA resolution by a large financial services institution**
 - *“Financial services providers face unique corruption risks when seeking to win business in international markets, and we will continue to scrutinize industries that have not been vigilant about complying with the FCPA.”*
-- SEC FCPA Unit Chief Kara Brockmeyer (Aug. 2015)

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

■ BNY Mellon (cont.):

■ First FCPA settlement involving internships as “things of value”

- *“The internships were valuable work experience, and the requesting officials derived significant personal value in being able to confer this benefit on their family members.”*
-- SEC Cease and Desist Order at 6 ¶ 21
- *“Some have expressed concern about these cases, arguing that it is difficult to draw a clear line between what constitutes a violation and what does not, in cases involving less traditional items of value The line . . . is in the same place it always has been . . . bribes come in many shapes and sizes.”*
-- SEC Director of Enforcement Andrew Ceresney (Nov. 2015)

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

- **Mead Johnson Nutrition Company (SEC, July 2015)**: \$12 million settlement for Mead Johnson Nutrition Company (“Mead Johnson”), an Illinois-based pediatric nutrition company
 - **Industry / Country**: Healthcare and nutrition products / China
 - **Allegations**: Employees of Mead Johnson’s Chinese subsidiary made over \$2 million in improper payments to healthcare professionals at government-owned hospitals for recommendation of Mead Johnson products and to obtain contact information for patients who were new or expectant mothers so it could directly market its infant formula
 - **Charges**: Internal controls, books and records
 - *“Mead Johnson Nutrition’s lax internal control environment enabled its subsidiary to use off-the-books slush funds to pay doctors and other health care professionals . . .”*
-- SEC FCPA Unit Chief Kara Brockmeyer (July 2015)

2015 Enforcement Activity

SUMMARY OF U.S. ENFORCEMENT ACTIONS

- **Vicente Eduardo Garcia (DOJ / SEC, Aug. 2015):** Former SAP International, Inc. regional director pleaded guilty to conspiracy to violate the FCPA, and consented to SEC cease-and-desist order agreeing to disgorge kickbacks totaling \$85,965 plus prejudgment interest of \$6,430
 - **Industry / Country:** Technology / Panama
 - **Allegations:** Garcia used fake contracts and sham invoices to disguise \$145,000 in bribes to Panamanian officials in exchange for obtaining government technology contracts for SAP, the sales of which totaled about \$3.7 million; to fund the bribes, Garcia sold SAP software to a partner in Panama at discounts of up to 82% and the partner then created a slush fund from its excessive earnings
 - **Charges:** Bribery, internal controls
 - **Only 2015 FCPA resolution with dual action by DOJ/SEC**
 - **Sentenced to 22 months (Dec. 2015)**

2015 Enforcement Activity

DECLINATIONS

■ 14 SEC / DOJ Declinations Reported in 2015

- 5 SEC Declinations: NET1 UEPS Technologies, Gold Fields Ltd., Cobalt International Energy Inc., NCR Corp., Brookfield Asset Management
- 9 DOJ Declinations: BHP Billiton, PetroTiger, Hyperdynamics, FLIR Systems, Twenty-First Century News and Fox Corp., Eli Lilly, Goodyear, Bristol-Myers Squibb, ICBC Standard Bank
 - 6 of these had parallel SEC resolutions

■ Second Half of 2015 Declinations:

- NCR Corp. (SEC, Aug. 2015; DOJ investigation ongoing)
- Brookfield Asset Management (SEC, Aug. 2015)
- Bristol-Myers Squibb (DOJ, Oct. 2015; SEC settlement, Oct. 2015)
- ICBC Standard Bank Plc. (DOJ, Nov. 2015; U.K. DPA; SEC penalty regarding separate related conduct)

■ Compare to 2014:

- 4 SEC Declinations and 10 DOJ Declinations

2015 Enforcement Activity

GLOBAL REGULATORY ACTIVITY

- U.K. Serious Fraud Office (“SFO”)
 - Soma Oil and Gas Holdings criminal investigation
 - U.K.’s first DPA (ICBC Standard Bank Plc.)
 - Sweett Group Plc admission of violation of Section 7 of 2010 Bribery Act
- Brazil
 - 4 major government anti-corruption publications recently released
 - Charges by Brazilian prosecutors in connection with SBM Offshore and Petrobras bribery probe

Spotlight: China

INCREASED SCRUTINY OF REGULATORY OFFICIALS / FINANCIAL REGULATORS

- Scrutiny of China Securities Regulatory Commission (“CSRC”) officials in response to Chinese stock market volatility:
 - In early August, Li Lang, former head of the CSRC’s investor protection unit, was expelled from the Party for allegedly taking bribes and abusing his position; his case has since been referred by the Central Commission for Discipline Inspection (“CCDI”) for prosecution
 - In October, Zhang Yujun, assistant chairman of the CSRC, was removed from his position for a “serious disciplinary breach”
 - In November, Yao Gang, the CSRC’s vice-chairman, came under CCDI investigation for allegedly extracting personal gains from his position
- In October, CCDI also indicated that it was launching investigations of the People’s Bank of China, the China Banking Regulatory Commission, and the China Insurance Regulatory Commission
 - CCDI is also investigating stock exchange operators in Shanghai and Shenzhen

Spotlight: China

INCREASED SCRUTINY OF FINANCIAL SECTOR

- In October, CCDI announced it was launching investigations into several large financial firms:
 - China Investment Corp., currently the world's largest sovereign fund
 - Commercial banks, including ICBC and Bank of China
 - The parent company of Citic Securities, a major Chinese brokerage firm
- Individuals under investigation include:
 - Zhang Yun, President, Agricultural Bank of China
 - In December 2015, Zhang stepped down from his position as President of China's fourth-largest bank in connection with an investigation by CCDI, the Party's primary investigative arm; Zhang was also demoted and placed on probation within the Party; no formal charges have been announced

Spotlight: China

INCREASED SCRUTINY OF TELECOM AND TRANSPORT SECTORS

- In June 2015, CCDI announced it was launching investigations into several large companies in telecom and transport sectors:
 - Transport companies under investigation include Air China, China Eastern, and Comac, as well as the China Railway Corporation
 - Telecom companies under investigation include China Mobile and China Telecom
 - Chang Xiaobing, the Chairman of China Telecom, was purportedly “taken away” after it emerged that he was under CCDI investigation for “severe disciplinary violations”; shares in China Telecom dropped 3% the day after the investigation was announced
- Other entities purportedly under investigation include:
 - China Aluminum Corporation (Chalco)
 - The China National Petroleum Corp.
 - State Grid Corp.
 - The People’s Daily

Spotlight: China

CONTINUED CRACKDOWN ON HIGH-RANKING PUBLIC OFFICIALS

- Su Shulin, Governor, Fujian Province
 - In October 2015, Su came under CCDI investigation for “serious violations”
 - First time a sitting governor has been investigated on allegations of graft / corruption
- Zhou Yongkang, Former Member, Politburo Standing Committee
 - In June 2015, Zhou, who previously ran China’s domestic security operations, was sentenced to life in prison for accepting bribes and abusing his position; several other leading officials and executives, including Jiang Zemin, the former Chairman of China National Petroleum Corp., were also charged as part of the investigation
- Donald Tsang, Former Hong Kong Chief Executive
 - In October, former Chief Executive Donald Tsang was charged by HK’s Independent Commission Against Corruption (“ICAC”) with two counts of misconduct of public office, for failing to disclose benefits received from business leaders during his many years in office; his case is in its early stages

Spotlight: China

CHINESE CEOs DETAINED AS TARGETS / WITNESSES

- Several widely reported instances of Chinese executives “going missing” in connection with anti-corruption investigations:
 - In December, trading in a subsidiary owned by Chinese billionaire Guo Guangchang was suspended after he went missing; reports suggest he was under investigation for offering favors to an official at a state-owned enterprise
 - Guangchang reappeared two weeks later; his firm stated that he had been “aiding an investigation”
- Yim Fung, CEO of the HK subsidiary of a state-owned Chinese brokerage firm, was reported missing in November, allegedly in connection with an investigation into Yao Gang, vice-chairman of the CSRC
- In June, Poon Ho Man, CEO of China Aircraft, abruptly resigned his post following reports linking him to a government investigation of China Southern Airlines; the company has not been able to contact or locate him since

Spotlight: China

GLOBAL REPATRIATION EFFORTS DEMONSTRATING CONCRETE RESULTS

- China has stepped up its efforts to repatriate fugitive officials (Operation Foxhunt) and freeze their assets (Operation Skynet):
 - Interpol has now issued arrest warrants for nearly 100 fugitives facing domestic corruption charges; the majority in U.S., Canada, and other countries without extradition treaties
 - At least 18 arrests this year alone (and more than 100 since effort began in 2014), including repatriation of 2 high-priority officials from U.S.: Kuang Wanfang, the wife of a former Bank of China official, convicted of a nearly \$500 million fraud; and Yang Jinjun, a former high-ranking executive
 - Four fugitives also purportedly extradited from Europe
 - Cooperation between U.S. and Chinese officials has purportedly increased following this year's presidential summit between Xi and Obama

Spotlight: China

NEW INTERNATIONAL PAYMENT SYSTEM AND POTENTIAL AML CONCERNS

- In October, China officially launched its cross-border China International Payments System (“CIPS”), designed as an alternative to SWIFT:
 - Part of China’s ongoing efforts to internationalize RMB
 - Will facilitate clearing of cross-border, RMB-denominated payments without needing to use offshore clearing center; will eventually operate independently of SWIFT
 - Launching with 19 onshore banking institutions (including eight Chinese subsidiaries of foreign banks), but eventually will include offshore banks as well, to facilitate offshore-to-offshore RMB transactions
 - Some analysts view CIPS as a way around SWIFT, which FinCEN/OFAC and others rely on to block transactions between sanctioned parties; there are concerns that an independent CIPS could make it more difficult for banks to identify sanctioned parties to RMB transactions and to spot money laundering efforts at the placement stage

Spotlight: India

- New anti-corruption legislation proposed, though passage is uncertain:
 - Amendments to Prevention of Corruption Bill of 2013 referred in December to a select committee of Parliament's upper house; bill would:
 - Impose criminal liability on those who unilaterally offered or promised bribes to a public servant; expand public servant liability to be more consistent with the U.K. Bribery Act (no longer limited to purely financial advantages); and expand vicarious criminal liability for corporations where agents or associated individuals / entities engaged in bribery
 - A committee has also recommended passage of legislation combining the Central Vigilance Commission ("CVC") and Central Bureau of Investigation under one ombudsman responsible for official corruption: the Lokpal
- In November, CVC announced investigation of executives for bribes allegedly paid to Indian officials for customs clearances and store permits
 - Response to October report in WSJ documenting thousands of such bribes

DOJ / SEC Enforcement Focus

SEC “BROKEN WINDOWS” APPROACH

- In October 2013, SEC Chair Mary Jo White announced that the SEC would use a “Broken Windows” approach to enforcement:
 - *“[W]hen a window is broken and someone fixes it -- it is a sign that disorder will not be tolerated. But, when a broken window is not fixed, it is a signal that no one cares, and so breaking more windows costs nothing. The same theory can be applied to our securities markets -- minor violations that are overlooked or ignored can feed bigger ones, and, perhaps more importantly, can foster a culture where laws are increasingly treated as toothless guidelines. And so, I believe it is important to pursue even the smallest infractions.”*



DOJ / SEC Enforcement Focus

DOJ FOCUS ON “HIGHER IMPACT” CASES

- Recall: of 11 corporate resolutions in 2015, **9** were SEC and **2** were DOJ
- Although the SEC has a higher rate of enforcement activity, 2015 SEC settlements have lower average value (approx. \$13.8M per settlement) than in prior years (average cost to settle DOJ or SEC FCPA enforcement action in 2014 was \$156M)
- In response to questions, DOJ has announced that it is pursuing “**bigger, higher impact cases**, including those against culpable individuals, both in the U.S. and abroad, and those take longer to investigate and absorb significant resources”
 - “[O]ur mission is not to recover the largest amount of money from the greatest number of corporations; our job is to seek accountability from those who break our laws and victimize our citizens.”
-- Deputy Attorney General Sally Quillian Yates (Nov. 2015)

DOJ / SEC Enforcement Focus

DOJ FOCUS ON “HIGHER IMPACT” CASES

- At the same time, DOJ has been increasing resources devoted to pursuing corruption violations, announcing an increase of over 50% in FCPA-focused prosecutors
 - DOJ announced in November 2015 that it is planning to add 10 prosecutors to its FCPA unit
 - “[DOJ] investigations of FCPA cases remain at a high pace, and we have significantly increased the number of agents and prosecutors dedicated to these cases. The number of public announcements about filed cases or resolutions will vary, but have no doubt that our commitment to FCPA enforcement is stronger than ever.”
-- DOJ Spokesperson Peter Carr (Oct. 2015)

DOJ Compliance Counsel

- As of November 3, 2015, the DOJ Fraud Section has retained a “Compliance Counsel,” Hui Chen
- Role of Compliance Counsel stems from DOJ Principles of Federal Prosecution of Business Organizations (“Filip Factors”)
 - “The existence and effectiveness of the corporation’s pre-existing compliance program”
 - “[T]he corporation’s remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, to pay restitution, and to cooperate with the relevant government agencies”
- Note: Compliance “metrics” publicly discussed by DOJ Compliance Counsel to date are “not new”; most, if not all, have publicly appeared in:
 - DOJ/SEC *Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012)
 - “Attachment C” to DOJ deferred prosecution agreements

DOJ Compliance Counsel

- Compliance Counsel will help prosecutors evaluate compliance programs and design remedial measures to be incorporated into corporate resolutions
 - Quality of compliance programs can be significant factor in regulators' enforcement-related decisions (see, e.g., Morgan Stanley declination)
- Use of Compliance Counsel as a compliance “expert” will serve function similar to that other experts routinely retained by DOJ
- Per Andrew Weissmann, DOJ Fraud Section Chief, the purposes of having an in-house compliance expert will include:
 - To help companies that “get it” distinguish their programs from those that exist merely on paper
 - To bring consistency to DOJ's view of compliance matters
- Chen has stated she hopes to dialogue with the compliance community and solicit feedback about where challenges and realistic solutions lie, noting that an effective compliance program will look different across companies and industries

DOJ Compliance Counsel

- Chen has focused on four primary areas:
 - Thoughtful Design: Whether a program addresses root causes of problems, whether stakeholders have ownership over respective pieces of the program, and the level of communication with stakeholders in designing a program
 - Successful Operation: Whether a program designed to prevent or remediate conduct has been operationalized into the daily life of the corporation
 - Stakeholder Communication: Whether there is communication between compliance personnel and a corporation's stakeholders, and whether corporate culture facilitates an "open door" atmosphere in which employees feel free to raise issues
 - Resources: Whether a program receives not only adequate funding, but adequate attention and commitment

DOJ Compliance Counsel

HALLMARKS OF AN EFFECTIVE COMPLIANCE PROGRAM

- DOJ and SEC recognize there is no “one-size fits all” approach, but have highlighted the following as hallmarks of effective compliance programs:
 - Commitment from senior management and a clearly articulated policy against corruption
 - Code of conduct and compliance policies and procedures
 - Oversight, autonomy, and resources
 - Risk assessment
 - Training and continuing advice
 - Incentives and disciplinary measures
 - Third-party due diligence and payments
 - Confidential reporting and internal investigation
 - Continuous improvement through periodic testing and review

Increased Emphasis on Individuals

YATES MEMO

- On September 9, 2015, DOJ issued a guidance memorandum (the “Yates Memo”) underscoring DOJ’s focus on investigating and prosecuting individuals for roles in corporate misconduct
- The Yates Memo emphasizes that challenges associated with large-scale investigations “make it all the more important that [DOJ] fully leverage its resources to identify culpable individuals at all levels in corporate cases”
- DOJ has emphasized that to receive **any** cooperation credit, companies must now provide all relevant facts about individuals involved in or responsible for corporate misconduct
- The Yates Memo’s requirements will also apply in civil corporate enforcement matters
- DOJ has revised the U.S. Attorneys’ Manual to account for this policy focus on holding individual wrongdoers accountable

Increased Emphasis on Individuals

DOJ PRIOR FOCUS ON INDIVIDUALS

- DOJ focus on individuals is “nothing new”
 - “[That] cooperation includes giving all non-privileged information about the conduct of individuals – is nothing new What is new is the consequence of not doing it. In the past, cooperation credit was a sliding scale of sorts and companies could still receive at least some credit for cooperation, even if they failed to fully disclose all facts about individuals. That’s changed now. As the policy makes clear, providing complete information about individuals’ involvement in wrongdoing is a threshold hurdle that must be crossed before we’ll consider any cooperation credit.”
-- Deputy Attorney General Sally Quillian Yates (Nov. 2015)
 - “If you want full cooperation credit, make your extensive efforts to secure evidence of individual culpability the first thing you talk about when you walk in the door to make your presentation. Make those efforts the last thing you talk about before you walk out. And most importantly, make securing evidence of individual culpability the focus of your investigative efforts so that you have a strong record on which to rely. Corporations do not act criminally, but for the actions of individuals.”
-- Principal Deputy Assistant Attorney General Marshall Miller (Sept. 2014)

Increased Emphasis on Individuals

COMPLIANCE PROFESSIONALS

- Comments on Enforcement Actions against Compliance Officers
 - *“We know firsthand how challenging [compliance] work can be with limited resources . . . To be clear, it is not our intention to use our enforcement program to target compliance professionals . . . That being said, we must, of course, take enforcement action against compliance professionals if we see significant misconduct or failures by them. Being a CCO obviously does not provide immunity from liability, but neither should our enforcement actions be seen by conscientious and diligent compliance professionals as a threat.”*
-- SEC Chair Mary Jo White (July 2015)
 - *“[W]e do bring actions against CCOs . . . who are affirmatively involved in misconduct that is unrelated to their compliance function . . . [w]hen they are directly involved in fraudulent activity or other conduct that harms investors . . . [or] who engage in efforts to obstruct or mislead the Commission staff.”*
-- SEC Director of Enforcement Andrew Ceresney (Nov. 2015)

Increased Emphasis on Individuals

COMPLIANCE PROFESSIONALS

- *“We’re not interested in prosecuting mistakes or accidents, or bad business judgments. And we are not looking to prosecute compliance professionals. To the contrary, we view you as the good guys and as our allies. And we want to make sure that when we review a pre-existing compliance program, or suggest remedial measures, that we get it right.”*
-- Assistant Attorney General Leslie Caldwell (Nov. 2015)

SEC Hot Topics

- As of November 2015, the SEC **requires** self-disclosure for companies to be able to receive a DPA or NPA
- Litigants continue to challenge the constitutionality of the SEC's use of administrative proceedings under a variety of theories, including, e.g., violation of the right to a jury trial and violation of the Appointments Clause of Article II
 - One week after Tilton v. SEC (2d Cir. Sept. 2015), where the Second Circuit enjoined administrative proceedings while it considers whether the district court properly concluded it did not have jurisdiction, the SEC announced proposed amendments to rules governing administrative proceedings
- Whistleblower Program
 - SEC's 2015 Annual Report to Congress stated that SEC received nearly 4,000 tips, an increase of more than 8% from 2014 and over 20% compared to fiscal year 2013
 - Second Circuit extended Dodd-Frank's anti-retaliation provisions to whistleblowers who suffer retaliation as a result of reporting wrongdoing internally, without also reporting to the SEC (see Berman v. Neo-Ogilvy LLC (2d Cir. Sept. 10, 2015))

Appendix: 2015 Individual FCPA Resolutions

Appendix

2015 INDIVIDUAL FCPA RESOLUTIONS

- **Andres Truppel (Siemens S.A. – Argentina) (DOJ)**: Former CFO pleaded guilty to conspiring to pay bribes and conspiracy to commit wire fraud
 - **Industry / Country**: Technology / Argentina
 - **Allegations**: Truppel conspired to bribe Argentinian government officials to obtain and enforce a \$1B contract to create national identity cards; Truppel concealed the payments by using shell companies and paying \$7.4M as part of a hedging contract with a foreign currency company in the Bahamas
 - **Charges**: Bribery, internal controls, books and records

Appendix

2015 INDIVIDUAL FCPA RESOLUTIONS

- **Richard Hirsch & James McClung, Louis Berger International Inc. (DOJ):** Former Senior Vice Presidents responsible for overseeing LBI's operations in Indonesia, Vietnam, and India each pleaded guilty to one count of conspiracy to violate the FCPA and to one substantive count of violating the FCPA; sentencings set for February 2016
 - **Industry / Countries:** Construction / India, Indonesia, Vietnam, and Kuwait
 - **Allegations:** Individuals helped orchestrate \$3.9M in bribes to foreign officials to obtain government construction management contracts
 - **Charges:** Bribery

Appendix

2015 INDIVIDUAL FCPA RESOLUTIONS

- **Daren Condrey (TENAM Corporation; Pan American Department of JSC Techsnabexport (“TENAX”)) (DOJ):** Condrey, a Maryland resident and owner of a transportation corporation, pleaded guilty to conspiring to violate the FCPA and to commit wire fraud
 - **Industry / Countries:** Uranium / U.S., Russia
 - **Allegations:** Condrey conspired with Russian officials to send funds from Maryland and elsewhere in the U.S. to offshore shell company bank accounts to obtain improper business advantages for U.S. companies that did business with TENAX, a subsidiary of Russia’s State Atomic Energy Corporation and Moscow’s sole supplier and exporter of Russian Federation uranium and uranium enrichment services; funds were sent to influence Mikerin, a director of TENAX and president of its subsidiary, TENAM
 - Mikerin also pleaded guilty to conspiracy to commit money laundering
 - **Charges:** Bribery