

## **2017 FCPA Enforcement Actions and Highlights**

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Overall, this was a less active year in terms of Foreign Corrupt Practices Act (“FCPA”) enforcement actions, at least when compared to 2016. In 2017, the Department of Justice (“DOJ”) took a total of 9 enforcement actions and the Securities and Exchange Commission (“SEC”) took a total of 7 enforcement actions. Therefore, we observe that the DOJ has been more active than the SEC in terms of the number of enforcement actions this year. So far in 2017, we have witnessed only 2 declinations within the scope of the Pilot Program,<sup>1</sup> as opposed to 5 declination decisions in 2016.

Of the 9 enforcement actions taken by the DOJ, 5 of them were related to real persons. 2 individuals were charged with offenses within the scope of the 7 SEC enforcement actions.

2017 marks another year in which enforcement actions against individuals were lower in number than the enforcement actions taken against corporations. The Yates Memo, which was published on 2015, underlined the significance of individual accountability for deterring corporate wrongdoing, and provided guidelines as to how to enforce and ensure such accountability. Nevertheless, the total number of FCPA enforcement actions taken against individuals so far is 7, as opposed to 12 enforcement actions brought against corporations.

### **DOJ Declination Decisions**

In June 2017, the DOJ closed its investigation with regard to Linde North America, Inc., and Linde Gas North America, LLC (collectively known as “Linde”). According to the DOJ, Spectra Gases, Inc. (“Spectra”), a company that Linde acquired in 2006, bribed foreign public officials in the Republic of Georgia between 2006 and 2009, in relation to Spectra’s transactions with the National High Technology Center (“NHTC”), a state-owned and state-controlled entity in Georgia. The DOJ records indicate that three high-level executives of Spectra entered into an arrangement with NHTC officials and a third-party intermediary, whereby the parties would share the profits of income-producing products sold by NHTC to Spectra. Throughout the course of this scheme, Spectra entered into an agreement with a company established by NHTC officials, which allegedly provided consultancy services to Spectra, and, in return, received a certain amount of profit from the transaction in question. After Linde learned of the corrupt arrangement, it withheld the \$10 million payment due to Spectra executives, and refused to make any further payments that were due to the companies controlled by NHTC officials. The DOJ’s declination decision was based on this withholding

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<sup>1</sup> The pilot program provides companies with the opportunity to receive declination decisions, in case these companies meet the conditions put forth in “The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance.”

of payments (which was viewed and categorized as a remediation step), Linde's timely and voluntary disclosure, full cooperation, its termination of the employees and business partners who had taken part in the corrupt arrangement, and the fact that it had agreed to disgorge any profits it had received due to the corrupt arrangement, among others.

In June 2017, the DOJ closed its investigation with regard to CDM Smith, Inc. ("CDM"), a Boston-based engineering and construction firm. According to the DOJ, CDM and its subsidiary in India had paid approximately \$1.18 million in bribes to Indian government officials through various employees and agents, in order to secure construction contracts. The bribes, which were funneled through subcontractors, were generally in the range of 2-4% of the contract price. The subcontractors provided no actual services and they were aware that the payments were being made for the benefit of public officials. All members of the senior management of CDM India had taken part in this scheme. Among others, the DOJ's declination decision was based on CDM's timely and voluntary self-disclosure, its full cooperation, its comprehensive investigation of the matter, and the fact that it had agreed to disgorge profits resulting from the scheme.

### **DOJ Enforcement Actions**

In January and October 2017, three individuals (Juan Jose Hernandez Comerma, Charles Quintard Beech III, and Fernando Ardila Rueada), who were all owners or partial owners of energy companies, pleaded guilty to a bribery scheme related to Venezuela's state-owned and state-controlled energy company, Petroleos de Venezuela S.A. ("PDVSA"). According to their statements and admissions, all three had paid bribes so that their company could enter into contracts with PDVSA. Public officials had been entertained based on the contracts that had been awarded thanks to the actions and decisions of the relevant officials. Beech also admitted that he had conspired to hide the nature of the corrupt payments through various financial schemes and transactions.

In January 2017, Zimmer Biomet Holdings, Inc. ("Biomet"), a medical device manufacturing company, agreed to pay a \$17.4 million penalty to the DOJ, and more than \$13 million to the SEC, for having violated the deferred prosecution agreement ("DPA") that it had entered into in 2012. According to the SEC and the DOJ, Biomet continued to do business with a prohibited distributor in Brazil, which was notorious for its corruption and bribed a Mexican customs official via a customs broker. Biomet was deemed not to have established adequate internal control systems, as red flags suggesting bribery were continuously ignored.

In January 2017, a Chilean-based chemical and mining company called Sociedad Quimica y Minera de Chile S.A. ("SQM") agreed to pay a \$15 million penalty to settle the SEC's charges and a \$15.5 million penalty as part of a deferred prosecution agreement with the DOJ. According to the company's admissions, SQM had made donations to numerous foundations affiliated with Chilean politicians. For example, SQM paid around \$630,000 to a foundation controlled by a Chilean official who had influence over a key part of SQM's business in

Chile. Furthermore, SQM hid these payments under the guise of payments for consulting and professional services, which it never received.

In January 2017, Las Vegas Sands Corp. (“Sands”), a Nevada-based gaming and resort company, entered into a non-prosecution agreement (“NPA”) with the DOJ, and agreed to pay a fine of nearly \$7 million for its FCPA violations. According to the company’s admissions, Sands knowingly and willfully failed to implement an internal controls system in order to ensure that the company books and records were complete and accurate. Sands paid approximately \$5.8 million to a business consultant without any apparent legitimate business purpose. In fact, the consultant was a former official of People’s Republic of China (“PRC”) and had offered its assistance to Sands based primarily on the qualification that it had political connections with PRC officials. Sands did not carry out any enhanced due diligence regarding the consultant or its dubious business practices, despite the numerous red flags. An employee of the finance department, along with an outside auditor, had warned the company that some of the payments made to the consultant could not be accounted for. Sands terminated the finance-department employee who had raised this issue. In 2016, Sands had paid \$9 million to the SEC in a parallel investigation.

In July 2017, Amadeus Richers, the former general manager of an American telecommunications company, pleaded guilty to the charge of conspiring to violate the FCPA. According to his admission, Richers (along with his co-conspirators) had paid about \$3 million to Haitian government officials in order to obtain business in relation to Telecommunications D’Haiti, the state-owned and state-controlled telecommunications company in Haiti. Some of the bribes had been paid through third-party intermediaries, and others had been paid directly to officials or to the relatives of those officials. Richers, a German citizen living in Brazil, was sentenced to time served, 3 years of supervisory release, and also ordered to pay a criminal monetary penalty of \$100.

In September 2017, a Swedish telecommunications company, Telia Company AB (“Telia”), entered into a global settlement with the SEC, the DOJ and the Dutch and Swedish law enforcement agencies. Telia and its Uzbek subsidiary, Coscom LLC (“Coscom”), agreed to pay a total penalty of more than \$965 million to resolve charges with regard to a bribery scheme in Uzbekistan. According to the records of the SEC and the DOJ, Telia and Coscom had bribed an Uzbek government official in the amount of at least \$331 million. According to the SEC, Telia paid the bribes to a shell company, which was controlled by a family member of the Uzbek president, in the guise of payments for lobbying and consulting services, which were never obtained. The penalty payment of \$965 million may be offset by the fines paid to Swedish and Dutch authorities.

In October 2017, Joseph Baptiste, a retired U.S. Army Colonel, was charged in an indictment for allegedly taking part in a foreign bribery and money laundering scheme with regard to an \$84 million port-development project in Haiti. Mr. Baptiste allegedly solicited bribes from

undercover FBI agents, who were acting as potential investors. Mr. Baptiste allegedly told the agents that the payment would be made to Haiti officials through a non-profit that he controlled. Mr. Baptiste allegedly took approximately \$50,000 from the agents for the bribes, and used the money for his personal dealings, but he allegedly also intended to receive more money for the bribes.

### **SEC Enforcement Actions**

In January 2017, Mondelez International, Inc., a US-based food beverage and snack manufacturer, along with its subsidiary, Cadbury Limited (“Cadbury”), agreed to pay a \$13 million civil penalty to settle SEC charges with regard to the violation of the internal controls and books-and-records provisions of the FCPA. According to the SEC, Mondelez acquired Cadbury and its subsidiaries, including Cadbury India Limited (“Cadbury India”), in February 2010. Subsequently, Cadbury India hired an agent in order to obtain licenses and approvals for a factory in India. However, it did not conduct appropriate due diligence or sufficiently monitor the agent. After receiving payments from Cadbury India Limited, the agent withdrew most of the money (a total of \$90,666) from the account in cash. According to the SEC, Cadbury India failed to keep accurate books and records with regards to the agent’s purported services, and Cadbury failed to implement adequate controls regarding its subsidiary, Cadbury India.

In January 2017, Orthofix International (“Orthofix”), a Texas-based medical device company, agreed to admit wrongdoing and pay a fine of more than \$14 million to the SEC. The settlement relates to two offenses: The SEC found that Orthofix had booked certain revenues improperly and had made payments to doctors who worked in a state-controlled hospital in Brazil in order to boost its sales. In addition, four former executives also agreed to pay penalties in cases that were related to the accounting violation. According to the SEC, Orthofix used high discounts, third parties and fake invoices in order to lure the doctors into using the company’s products.

In January 2017, Michael L. Cohen, the former head of Och-Ziff Capital Management Group’s (“Och-Ziff”) European office, and Vanja Baros, a former executive of Och-Ziff who worked on deals related to Africa, were charged with violating the FCPA and the Securities Exchange Act, and with aiding and abetting Och-Ziff’s violations. According to the SEC, the former executives allegedly orchestrated a bribery scheme worth millions of dollars involving high-level government officials in Africa, which resulted in an investment by the Libyan Investment Authority (Libya’s sovereign wealth fund) in funds that were managed by Och-Ziff. They also allegedly attempted to pay bribes to government officials in Chad, Niger, Guinea, and the Democratic Republic of the Congo, in order to secure mining deals. Och-Ziff and two other executives had already settled the charges brought against them in 2016.

In July 2017, Halliburton, an American oil field services company, agreed to pay the SEC more than \$29.2 million in order to settle the charges brought by the SEC with regard to the selection and payment processes of a local company with close ties to Angolan public officials, with the goal of winning oil field services contracts from the government. According to the SEC, the company outsourced its business to a local company whose owner was a former Halliburton employee and who also happened to be the friend and neighbor of the Sonangol official who would award the contracts. According to the SEC, the company entered into a relationship with this company not because of the work that the local company would carry out on its behalf, but solely in order to meet the local content regulations. The company's former vice president Jeannot Lorenz, also agreed to pay a \$75,000 penalty to the SEC in relation to the same investigation.<sup>2</sup>

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<sup>2</sup> Information regarding the cases mentioned in this section has been obtained from the official SEC (<https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml>) and DOJ (<https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2017>) websites.