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RISK & COMPLIANCE JOURNAL.

U.S. Bribery Enforcement Gained Steam in Quarter

By William Garrett

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The U.S. Department of Justice initiated four enforcement actions against corporate groups and five actions against individual defendants in the second quarter. PHOTO: REUTERS

(This is a quarterly analysis of trends in antibribery enforcement by The Foreign Corrupt Practices Act Clearinghouse, a database operated by Stanford Law School. The views presented here are those of the author alone, not those of Dow Jones or the Wall Street Journal.)

After a slow start to 2018, Foreign Corrupt Practices Act enforcement activity increased in the second quarter, raising the potential for a banner year in FCPA-related penalties collected. Collectively, the Securities and Exchange Commission and Department of Justice initiated enforcement actions against five different entity groups and five individuals. Total sanctions, including those payable to foreign regulators, were more than \$1.2 billion. The SEC and DOJ continue to investigate dozens of companies for potential FCPA violations.

Enforcement statistics

FCPA enforcement activity can be measured in many different ways. For purposes of these statistics, the Clearinghouse counts all activity by an agency against a single corporate group based on the same underlying bribery scheme as one enforcement action. It lists each individual defendant separately, even if they are charged under the same docket number. The Clearinghouse analysis includes actions that don't allege FCPA violations but that are FCPA-related.

During the quarter, the DOJ initiated four enforcement actions against corporate groups and five actions against individual defendants, while the SEC began administrative proceedings against two corporate groups. All of the corporate enforcement actions were settled at the time

of filing while the actions against four of the five individuals remain ongoing. In addition, the DOJ unsealed one individual enforcement action that was filed late last year.

Figure 1 shows all the DOJ enforcement actions filed, unsealed, or first identified as FCPA-related from the start of April through the end of June.

PHOTO: FCPA CLEARINGHOUSE

Figure 2 shows all the SEC enforcement actions filed, unsealed, or first identified as FCPA-related during the quarter.

PHOTO: FCPA CLEARINGHOUSE

The DOJ has never identified the enforcement actions against Frank Roberto Chatburn Ripalda and Jose Larrea as FCPA-related, although Mr. Ripalda is charged with conspiracy to violate the FCPA. While we count them separately, the DOJ is prosecuting both defendants under the same docket number based on the same underlying misconduct, though Mr. Larrea is charged with only money-laundering violations.

Sanctions

Several corporate groups agreed to pay large monetary sanctions to settle FCPA claims in the second quarter of 2018. The SEC and DOJ imposed total monetary sanctions of over \$1.2 billion on corporate defendants in FCPA actions, although some of those sanctions were paid to foreign regulators. Panasonic settled with both the DOJ and SEC in April for combined sanctions of more than \$280 million. In late May, Credit Suisse Group agreed to pay \$47 million to resolve the DOJ's allegations of a corrupt hiring scheme involving friends and family of Chinese officials. The SEC also resolved FCPA claims with Credit Suisse based on the same allegedly improper hiring practices. Because the SEC's administrative cease-and-desist order wasn't filed until the third quarter of 2018, it isn't included in this report.

Societe Generale and Legg Mason settled in late May and early June, respectively, based on their alleged efforts to bribe officials to secure investments from Libya's sovereign-wealth fund and related government-owned financial firms.

Legg Mason settled with the DOJ for more than \$64 million, and the company's most recent SEC filings indicate that it is close to resolving claims with the commission in the same matter. In a global settlement, Societe Generale agreed to pay more than \$860 million to French and U.S. authorities.

The Societe Generale global settlement ranks as the third-largest in FCPA history behind the Odebrecht and Telia settlements. Figure 3 shows the ten largest settlements in the history of the FCPA.

PHOTO: FCPA CLEARINGHOUSE

There are common trends among the ten companies with the highest global monetary sanctions. First, with the notable exception of Halliburton, all of the companies are foreign. Six settled FCPA claims through a global resolution, which may increase the total amount of sanctions. Second, none of the companies received any credit for reporting potential FCPA violations to the SEC or DOJ. Under the principles outlined in the DOJ's FCPA Corporate Enforcement Policy, failure to self-report minimizes the penalty discount those companies may receive from the minimum levels allowed by the U.S. Sentencing Guidelines.

Guilty pleas and sentencing

Four individual defendants pleaded guilty to FCPA-related offenses in the second quarter of 2018. Julia Vivi Wang entered a guilty plea on April 4 to paying a bribe to the late Antiguan ambassador to the United Nations, John Ashe. She is scheduled to be sentenced on Sept. 5. Marcelo Reyes Lopez, who worked at Ecuador's state-owned oil company EP Petroecuador, reached a plea agreement with the DOJ on April 11 and is scheduled to be sentenced on July 23. Egbert Yvan Ferdinand Koolman pleaded guilty on April 13 to misconduct in Aruba; the court sentenced him on June 29 to three years in prison and ordered him to pay more than \$1.3 million in restitution. Cesar David Rincon-Godoy, an official with Venezuela's state-owned oil company Petroleos de Venezuela SA, pleaded guilty to FCPA-related money-laundering charges on April 19. Though Mr. Rincon-Godoy isn't scheduled to be sentenced until Dec. 10, the court has already ordered him to forfeit more than \$7 million.

In addition, three individuals who previously pleaded guilty to, or were convicted of, FCPA-related offenses were sentenced during the second quarter. Lawrence W. Parker, Jr., who pleaded guilty to the same underlying misconduct as Egbert Koolman, was sentenced on April 30 to 35 months in prison and ordered to pay restitution of more than \$700,000. Ng Lap Seng, who was convicted at trial of bribing John Ashe (the same official implicated in the action against Julia Wang), was sentenced on June 7 to four years in prison and ordered to pay more than \$3 million in fines, forfeiture, and restitution. Finally, Arturo Escobar Dominguez, who was an official at Petroecuador, was sentenced on June 7 to four years in prison.

Investigations

U.S. authorities are currently investigating at least sixty-three different entity groups for possible FCPA violations. Only one, iHeartMedia, disclosed a new FCPA investigation during the quarter.

In the second quarter, eight corporate groups either resolved FCPA-related investigations by the DOJ or SEC or announced the closure of an investigation before the quarter began. The SEC resolved two investigations by filing enforcement actions and closed two investigations without further action. The DOJ resolved four investigations by filing enforcement actions,

issued one formal declination pursuant to the new corporate enforcement policy, and closed three investigations without taking further action. Although the DOJ filed enforcement actions against Societe Generale and Legg Mason in the second quarter, the SEC still appears to be investigating both companies.

Figure 4 shows all investigation resolutions that either occurred or were disclosed in the quarter.

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PHOTO: FCPA CLEARINGHOUSE

What's next

The Clearinghouse continues to monitor several companies that previously disclosed accruals for impending FCPA-related settlements. One of those companies, Walmart, continues to disclose new expenses related to its FCPA investigation. According to SEC filings, Walmart has spent \$884 million in investigation costs to date, although the company includes money paid out in private lawsuits in that total.

Halfway through the year, the DOJ and SEC have already recovered almost as much in monetary sanctions as they did in all of 2017. Should Walmart or any of the other impending large settlements be finalized in 2018, the total sanctions recovered this year by U.S. regulators may end up among the largest in the history of the FCPA.

William T. Garrett is content and data analytics manager for the Foreign Corrupt Practices Act Clearinghouse, part of the Rock Center for Corporate Governance at Stanford Law School. The clearinghouse is a free public database developed by researchers at Stanford Law School in collaboration with attorneys at Sullivan & Cromwell LLP. The database is available at <http://fcpa.stanford.edu>.

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