

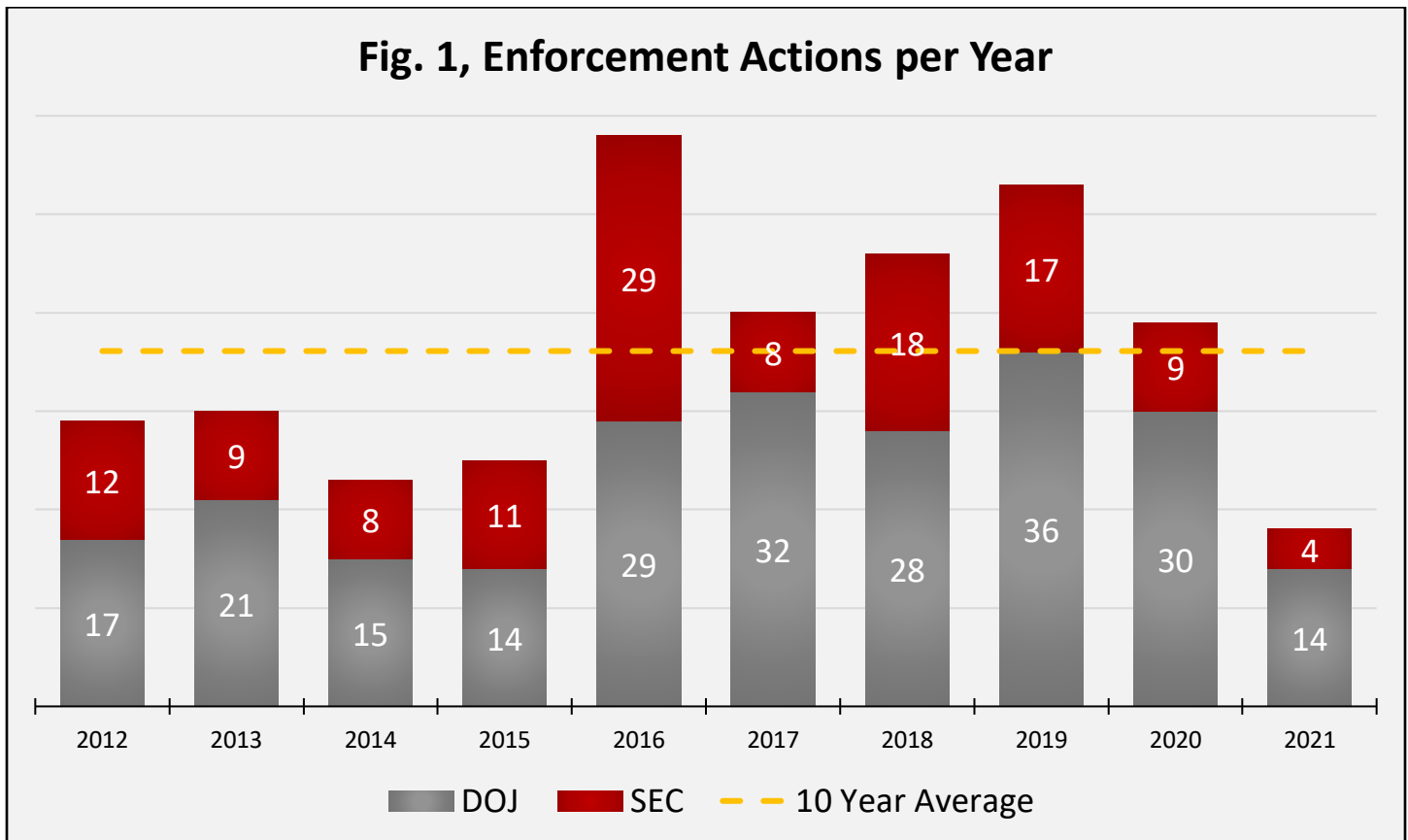
## 2021 FCPA Year in Review

The FCPA Clearinghouse’s 2021 Year in Review provides an overview of some of the more notable trends and statistics to emerge from last year’s FCPA enforcement activity.

### Enforcement Statistics

There are a number of different ways to define FCPA enforcement activity and to count the number of new actions initiated each year. The FCPA Clearinghouse does not advocate one counting methodology over another, but instead presents the data in a number of different ways so that users can make their own informed judgments. Because our counting methodologies rely on defined terms (which are denoted below in bold), we make those definitions available at the “[Definitions](#)” tab of the [About Us](#) page.

The DOJ and SEC filed 18 enforcement actions in 2021. Fueled by a steep drop in the number of actions filed by both agencies, last year’s enforcement activity was the lowest in a decade, and significantly below the ten-year average of 36. Figure 1 presents the number of [Enforcement Actions](#) filed per year for each of the last 10 years. For purposes of these analytics, we treat declinations with disgorgement pursuant to the [DOJ’s Revised Corporate Enforcement Policy](#) as enforcement actions.



The drop in enforcement activity contributed to a drop in [FCPA Matters](#), which are groups of related enforcement actions that share a common bribery scheme. The six FCPA Matters initiated in 2021 represent a decline of almost 50 percent compared to 2020, and more than 70 percent compared to 2019. Figure 2 presents the number of FCPA Matters initiated per year for each of the last ten years.

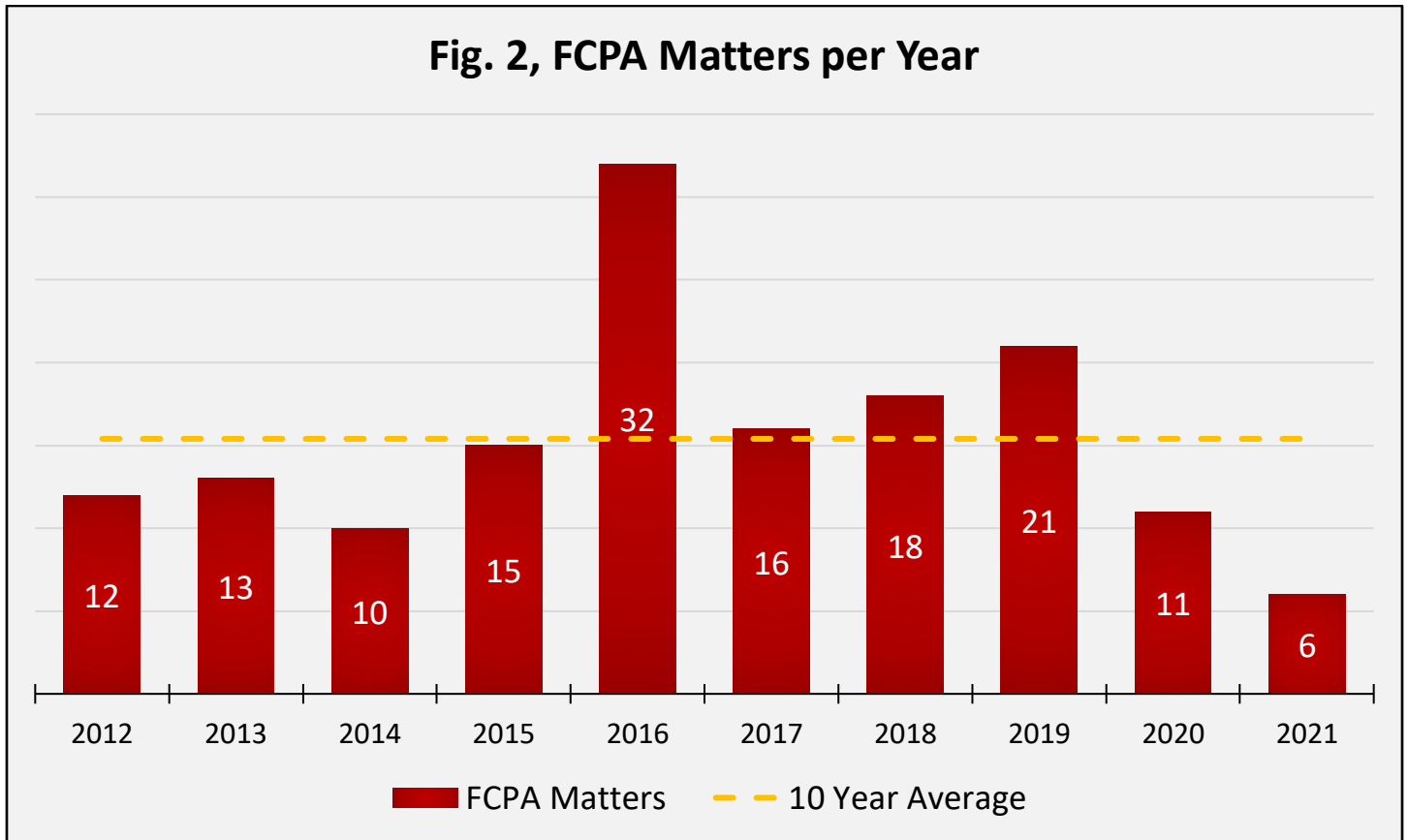
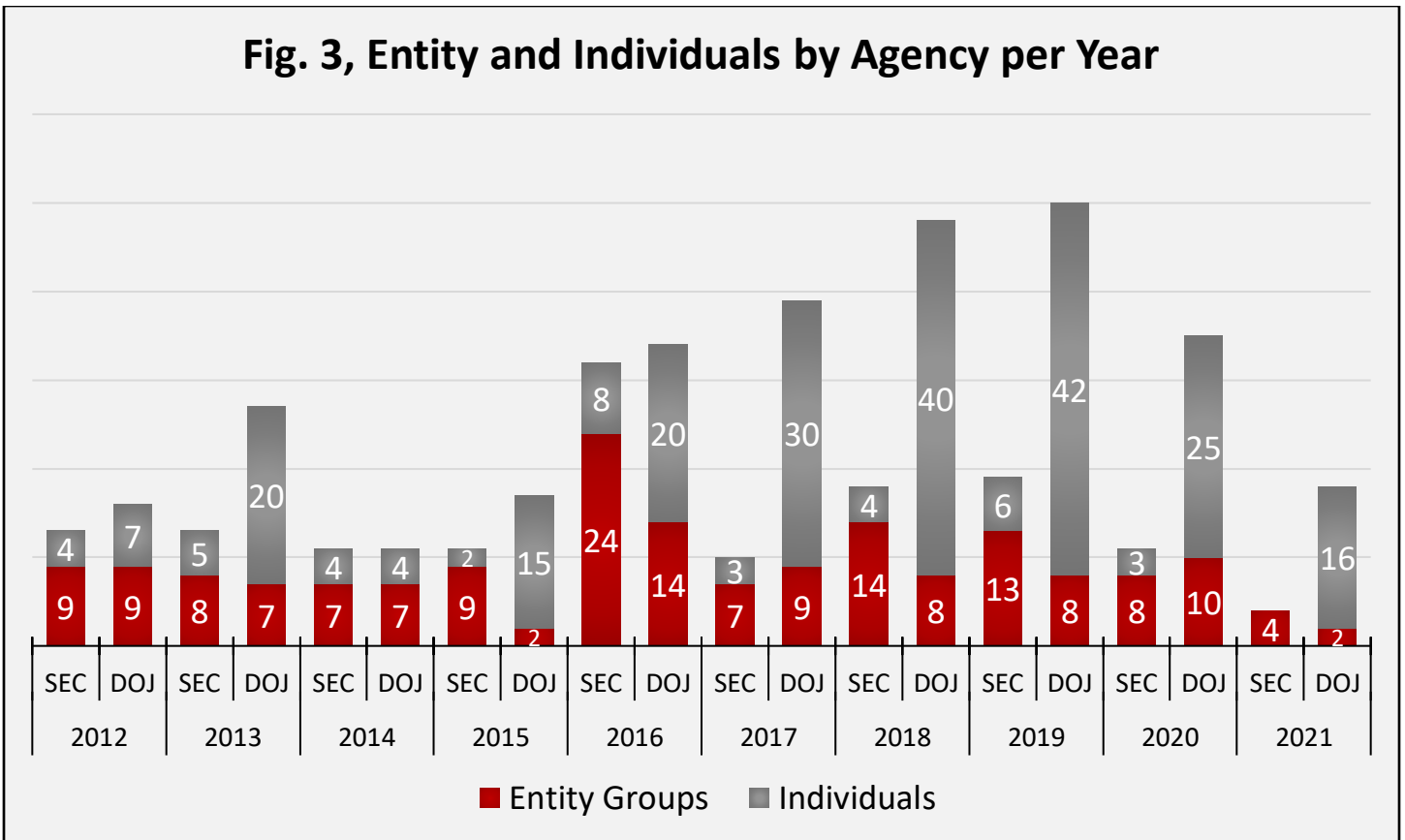


Figure 3 depicts the number of [Entity Groups](#) and individuals subject to FCPA-related enforcement activity over the last ten years. In 2021, the SEC sued four entity groups and no individual defendants for FCPA-related violations, while the DOJ charged two entity groups and 16 individual defendants.

**Fig. 3, Entity and Individuals by Agency per Year**



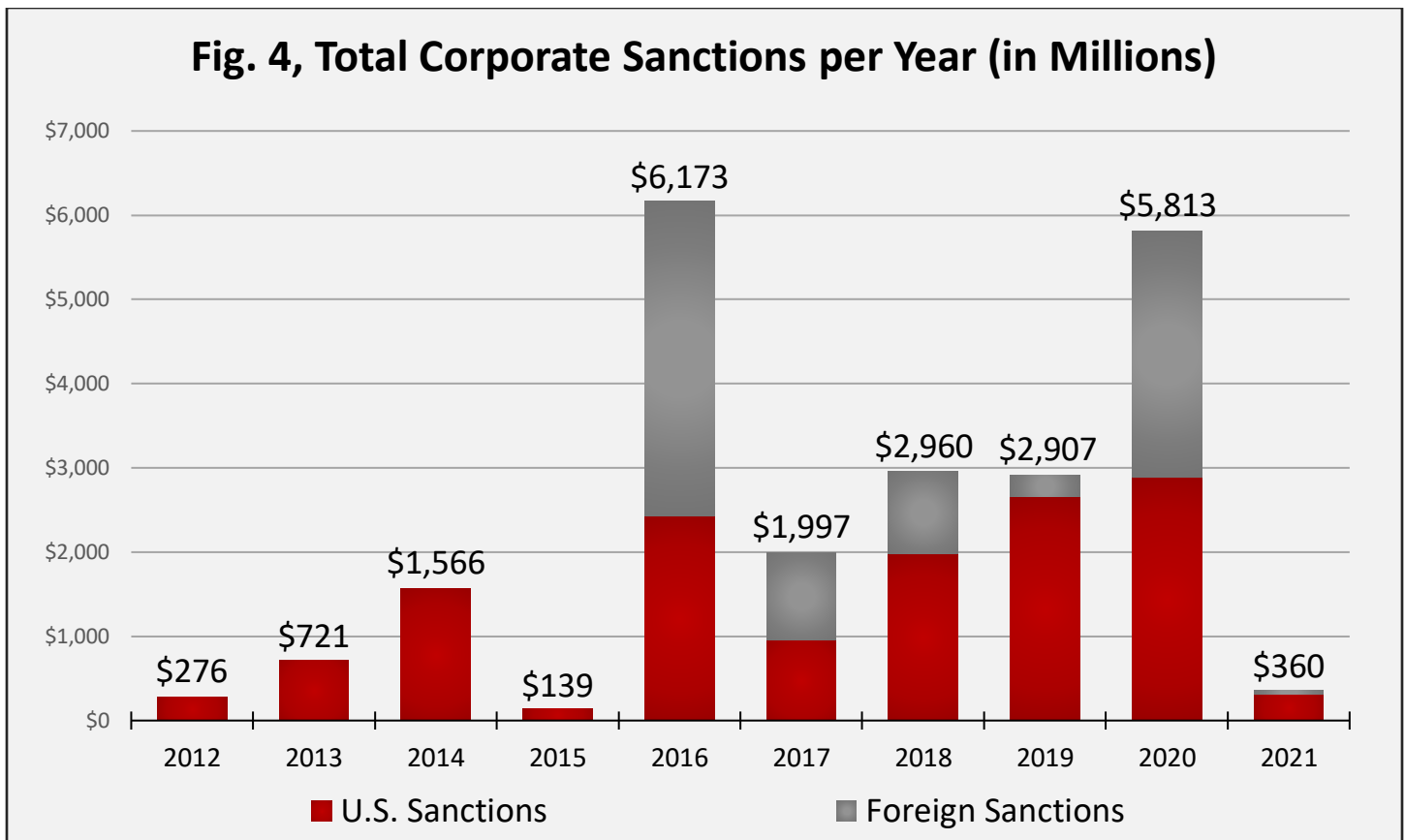
The number of individuals criminally prosecuted by the DOJ for FCPA-related offenses declined significantly between 2020 and 2021. This decrease marks the second consecutive year of significant declines, but the decrease comes on the heels of three years of exceptionally high levels of individual prosecutions. Nevertheless, DOJ enforcement of individuals for 2021 was more than 25 percent below the ten-year average of 22. The DOJ has emphasized in recent years that it is especially interested in prosecuting the individuals responsible for corporate misconduct. However, continuing a trend that began in at least 2019, the vast majority of individuals criminally charged with FCPA-related offenses in 2021 appear to be either connected to small or privately held companies with no parallel DOJ enforcement actions, or the foreign officials alleged to have accepted bribes. Indeed, none of the individual defendants criminally charged in 2021 was connected to the large companies that account for the most significant FCPA violations and fines.

Appendix 1 to this report provides a list of all FCPA-related enforcement actions initiated in 2021, as well as a few actions that were announced in 2021 but initially filed under seal in prior years. The latter actions are noted here for reference only; they are not included in the 2021 annual statistics.

**Sanctions**

Concomitant with the fall in enforcement activity, total corporate sanctions plummeted in 2021. Last year, U.S. regulators imposed just under \$360 million in sanctions against corporations in FCPA-related enforcement actions, a startling 94 percent decrease from 2020 and the third lowest in a decade. This amount includes sanctions imposed by the U.S. but owed to foreign regulators pursuant to global resolutions or parallel foreign actions. The average global sanction imposed on entity groups in 2021 (\$120 million) was also below the ten-year average of \$176 million. Figure 4 shows the [total sanctions imposed on entity groups](#) in FCPA-related enforcement actions, including amounts imposed by the SEC or DOJ that were ultimately owed to foreign regulators.

**Fig. 4, Total Corporate Sanctions per Year (in Millions)**



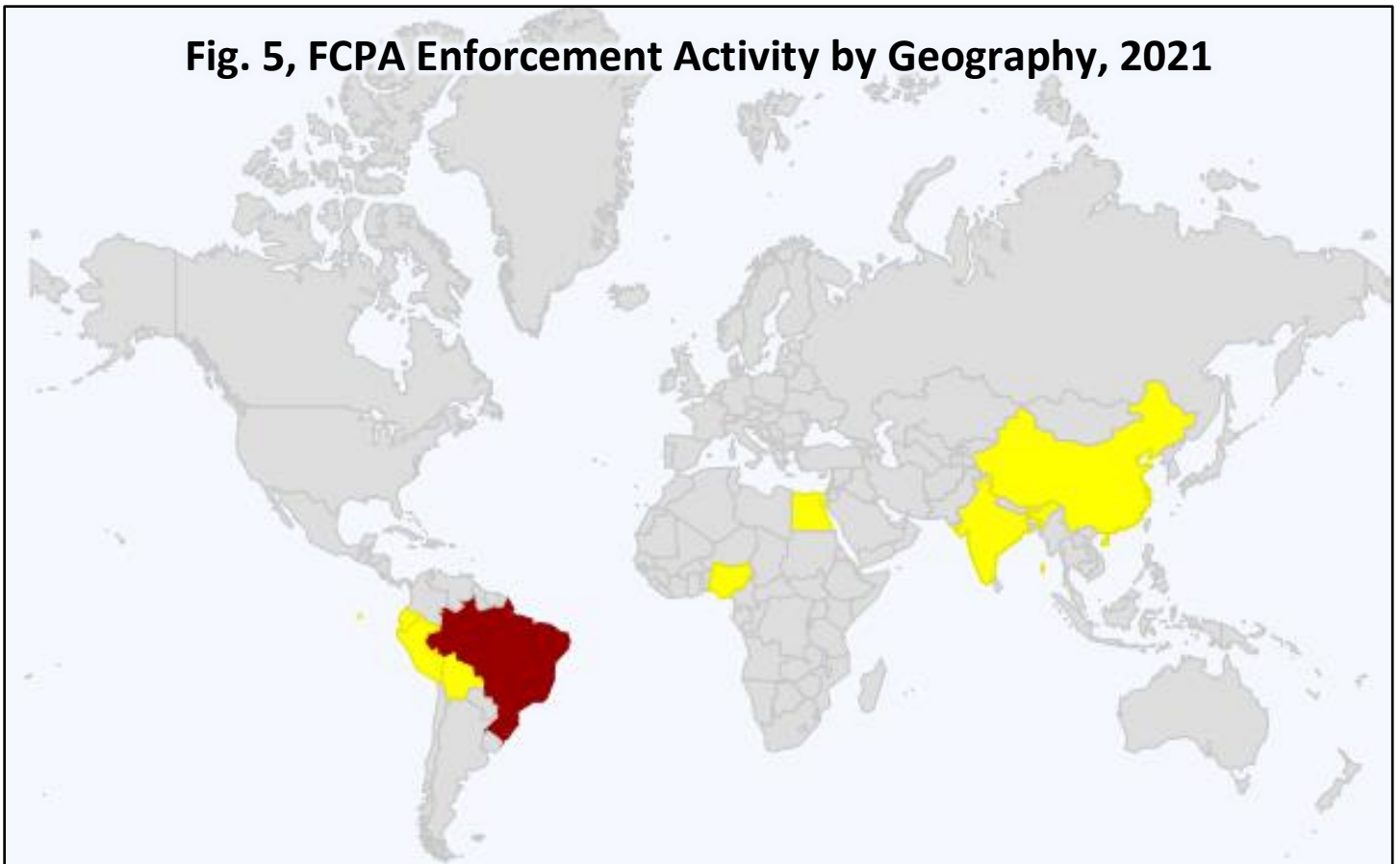
Typically, the bulk of the sanctions that government regulators impose on FCPA violators in any given year can be attributed to just a handful of companies. That pattern held for 2021, where the sanctions levied against Credit Suisse Group AG (\$299 million) accounted for over 83 percent of the total sanctions imposed in 2021.<sup>1</sup>

### **Geography**

The FCPA Clearinghouse identified nine common bribery schemes among the 18 enforcement actions filed in 2021. Brazil moved up from second place in 2020 to take the top spot as the country most frequently implicated in FCPA-related bribery schemes resulting in enforcement actions, with two separate schemes. The remaining seven countries implicated in 2021 all had one bribery scheme each. When examined by region, Latin America was most frequently implicated in FCPA-related bribery schemes, with over 50 percent of the schemes. Asia dropped to second place with just under a quarter of the schemes. The regional rankings for 2021 are as follows: Latin America (5), Asia (2), the Middle East (1), and Africa (1). Figure 5 shows all the countries implicated in FCPA enforcement actions in 2021.

<sup>1</sup> Though the SEC filed an enforcement action against Deutsche Bank in January 2021, the DOJ filed its action in December 2020. Pursuant to the Clearinghouse’s methodology for attributing corporate sanctions in FCPA actions to the year of the earliest enforcement action against the entity group, the entirety of the \$123 million in sanctions levied against Deutsche Bank are attributed to 2020 rather than 2021.

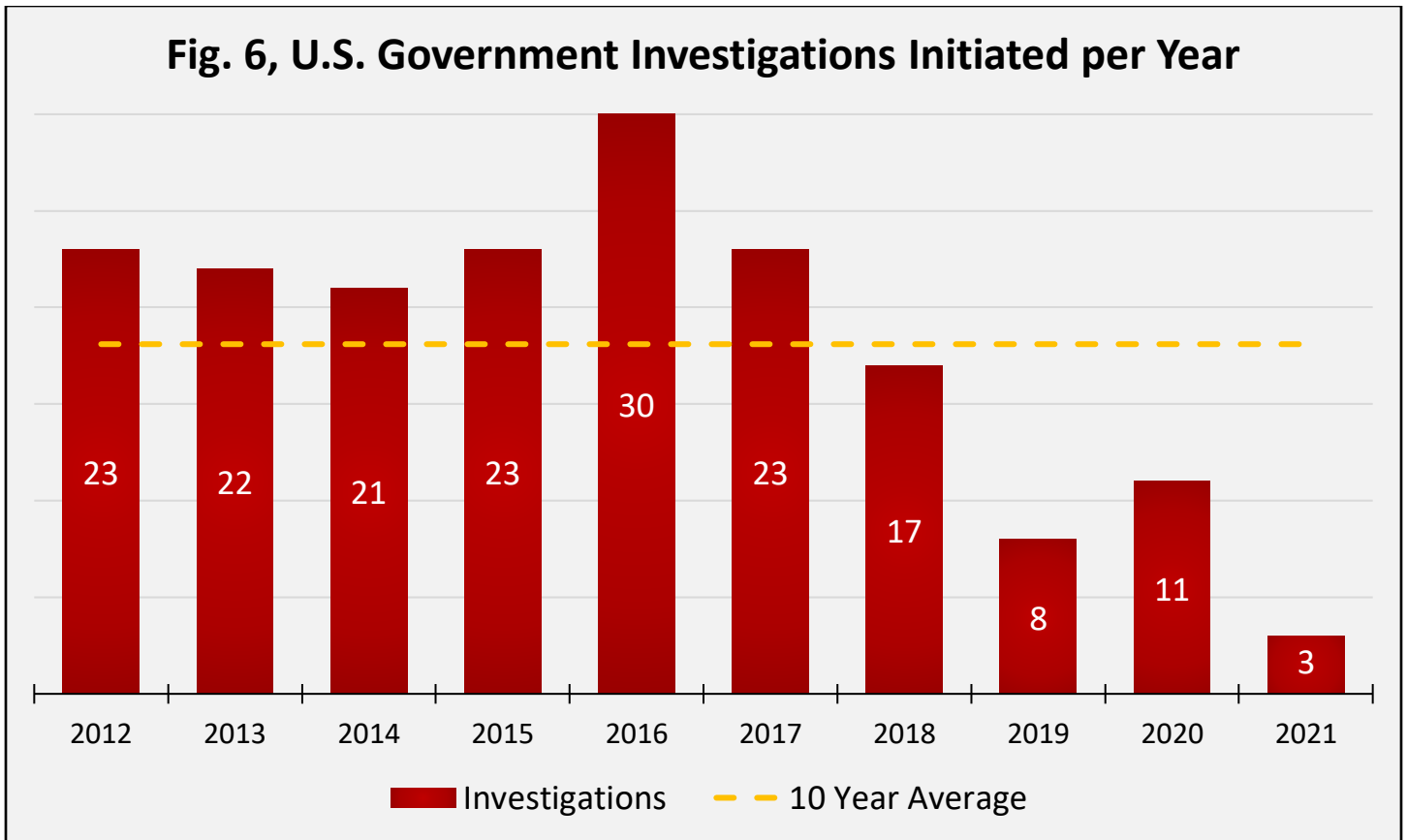
**Fig. 5, FCPA Enforcement Activity by Geography, 2021**



### **Investigations**

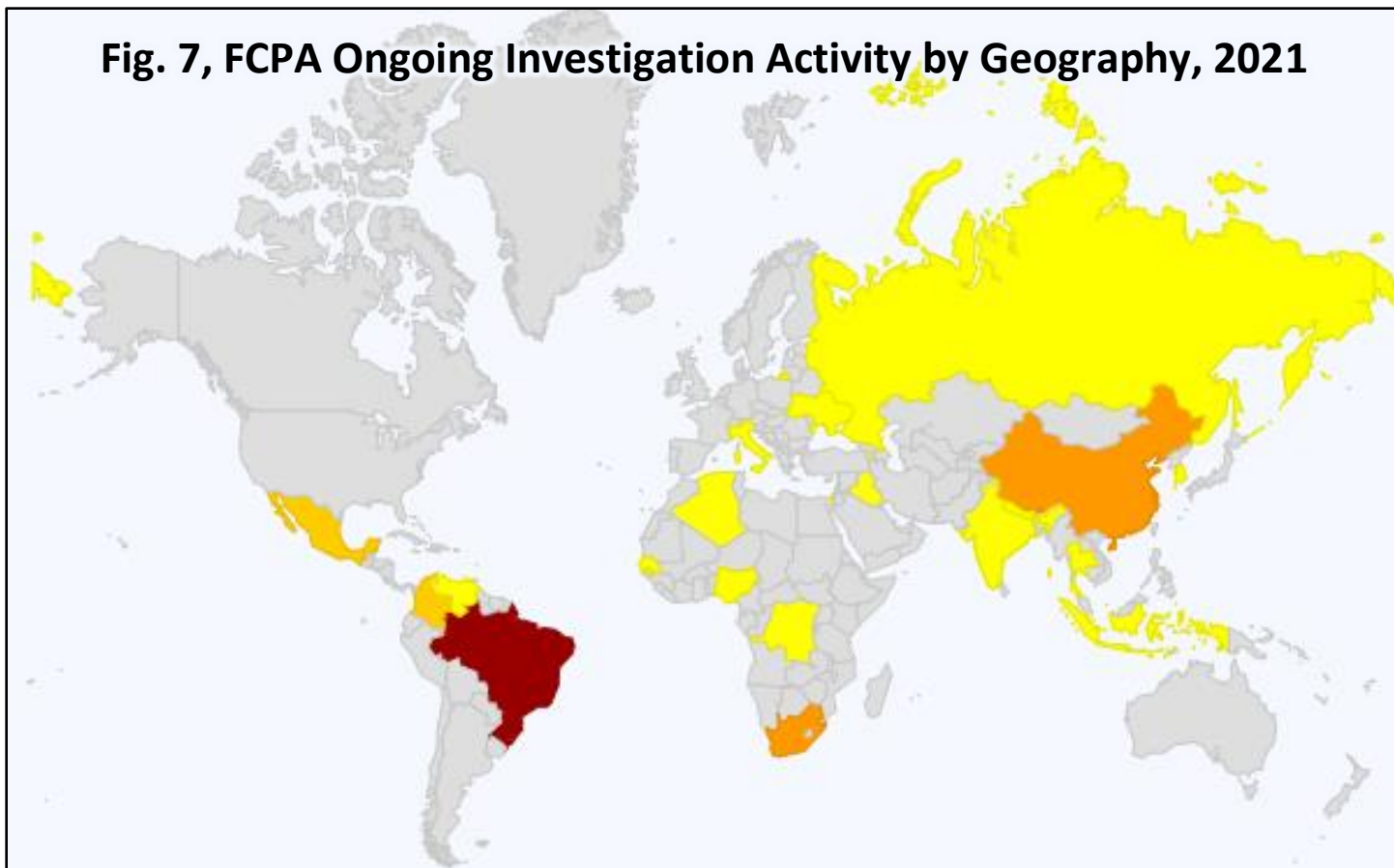
Only three companies disclosed in their SEC filings a new FCPA-related [Investigation](#) commenced by U.S. authorities in 2021. This number continues a general downward trend in disclosed investigations that began in 2018, despite a slight increase in 2020. In the ten years prior to this decline, an average of 22 companies had disclosed new FCPA investigations by the SEC or DOJ each year. Since the decline began in 2018 through the end of 2021, the average stands at just under 10 new government investigations per year. As of the close of 2021, at least 32 companies appear to be the subject of ongoing FCPA-related investigations by U.S. authorities. At least three additional companies first disclosed an FCPA-related internal investigation in 2021 without disclosing a related government inquiry. Figure 6 shows the number of FCPA investigations initiated by the U.S. government in each of the last ten years.

**Fig. 6, U.S. Government Investigations Initiated per Year**



The three countries most frequently cited in connection with ongoing FCPA-related investigations in 2021 remain the same as in 2020. Brazil tops the list, with at least five companies disclosing investigations into possible FCPA-related misconduct in Brazil. China and South Africa tie for second with three investigations each. Figure 7 shows the countries implicated in ongoing FCPA-related investigations as of the close of 2021.

**Fig. 7, FCPA Ongoing Investigation Activity by Geography, 2021**



According to information disclosed in SEC filings and other public documents, last year five entity groups disclosed that either the SEC, DOJ or both agencies had resolved investigations into potential FCPA violations by the companies. The SEC resolved two publicly-disclosed investigations by enforcement action ([Deutsche Bank AG](#) and [Amec Foster Wheeler plc](#)) and closed at least four investigations without taking further action ([BRF S.A.](#), [Avianca Holdings S.A.](#), [Pactiv Evergreen Inc.](#), and [Baker Hughes Company](#)). Although the SEC also filed enforcement actions against [Credit Suisse Group AG](#) and [WPP plc](#), those companies do not appear to have publicly disclosed investigations in advance of resolution.

The DOJ resolved one publicly-disclosed investigation by enforcement action last year ([Amec Foster Wheeler plc](#)) and concluded three investigations without pursuing any further action ([BRF S.A.](#), [Pactiv Evergreen Inc.](#), and [Baker Hughes Company](#)). Although the DOJ also filed enforcement actions against [Credit Suisse Group AG](#) and its subsidiary [Credit Suisse Securities \(Europe\) Limited](#), Credit Suisse does not appear to have publicly disclosed the investigation in advance of resolution.

### **Policy Changes to Corporate Enforcement**

In an October 28, 2021 [speech](#) at the American Bar Association's White Collar Crime Institute, Deputy Attorney General Lisa Monaco announced several policy changes consistent with tougher criminal enforcement of corporate offenders.

First, Monaco stated that moving forward companies will be required to provide prosecutors with non-privileged information about *all* individuals involved in corporate wrongdoing in order to be eligible for cooperation credit, returning to language that was originally included in a well-known [memo](#) introduced by then-Deputy Attorney General Sally Yates concerning individual accountability for corporate misconduct. During the Trump Administration, former Deputy Attorney General Rod Rosenstein had softened this language

by requiring companies seeking cooperation credit to identify only the individuals who were “substantially involved in” the criminal conduct.

Second, Monaco rescinded 2018 DOJ guidance to the extent it established a default presumption against corporate monitors, and noted that prosecutors will be free to impose a monitor whenever they deem appropriate in order to satisfy the terms of a corporate resolution, including compliance and disclosure obligations.

In another policy shift, Monaco stated that prosecutors will now consider all prior civil and criminal offenses committed by a company, including conduct penalized by other agencies, both foreign and domestic, in determining the appropriate form of resolution. Monaco specifically cited as an example that prosecutors will no longer look only at prior foreign bribery misconduct in FCPA actions, but also will consider whether the company has run afoul of federal tax laws, environmental and natural resources regulations, money laundering prohibitions, and other federal laws and regulations. Monaco added that the DOJ will consider whether and how to account for companies that become the focus of repeated DOJ investigations.

Finally, Monaco noted that the DOJ will aggressively pursue organizations that avail themselves of the leniency afforded by DPAs and NPAs, only to continue committing crimes. Monaco stated that the DOJ would aggressively pursue such companies with “serious consequences” imposed for violating the terms of these agreements, and pointed to two recent breach notifications issued by the DOJ to multinational corporations. Based on the companies’ SEC filings, the two notifications appear to have been issued to [Telefonaktiebolaget LM Ericsson](#) and [Mobile Telesystems PJSC](#), both of which entered into DPAs with the DOJ in 2019.

### **New OECD Recommendation on Combating Foreign Bribery**

On November 26, 2021, the Organization for Economic Cooperation and Development (OECD) adopted a new [Recommendation](#) for Further Combating Bribery of Foreign Public Officials in International Business Transactions that succeeds an earlier Recommendation adopted in 2009. The new Recommendation includes several changes that purport to strengthen global antibribery enforcement measures, including an entirely new section on the “demand” side of bribery that encourages member countries to stop the solicitation and acceptance of bribes by public officials. The new Recommendation also encourages member countries to consider using a variety of forms of resolutions when resolving criminal, administrative, and civil cases, including non-trial resolutions such as deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs), and offers a framework for the use of such non-trial resolutions.

With regard to whistleblowers, the new Recommendation encourages government agencies to consider a company’s internal controls and compliance programs “in their decisions to grant public advantages, including public subsidies, licenses, public procurement contracts, contracts funded by official development assistance and officially supported export credits.” Finally, the new Recommendation encourages member countries to “direct coordination in concurrent or parallel investigations and prosecutions” and to “pay due attention to the risk of prosecuting the same . . . person in different jurisdictions for the same criminal conduct.”

### **United States Strategy on Countering Corruption**

In the [National Security Study Memorandum](#) dated June 3, 2021, President Biden established the fight against corruption as a core national security interest of the United States and requested that federal departments and agencies conduct an interagency review to take stock of existing U.S. Government anti-corruption efforts and to identify and seek to rectify persistent gaps in the fight against corruption. Building on the findings of this review, on December 6 the Biden Administration released a United States Strategy on Countering Corruption that lays out a comprehensive approach for how the United States will work domestically and internationally to



prevent, limit, and respond to corruption and related crimes. The Strategy is divided into the following five pillars:

“Modernizing, coordinating, and resourcing U.S. Government efforts to fight corruption,” including by enhancing corruption related research, data collection, and analysis; improving information sharing domestically and internationally; increasing focus on the transnational dimensions of corruption; and more effectively organizing and resourcing the fight against corruption.

“Curbing illicit finance” by, among other things, addressing deficiencies in the U.S. anti-money laundering regime and working with allies and partners to address governance weaknesses and other deficiencies, tighten global regimes, increase information sharing and law enforcement cooperation, and prevent the establishment of new safe havens while closing old ones.

“Holding corrupt actors accountable” by enhancing the United States’ strong enforcement efforts, including by continuing to vigorously pursue the enforcement of foreign bribery cases through the FCPA; updating the tools available to hold corrupt actors accountable at home and abroad; working with partners to create complementary regimes and amplify anticorruption efforts; strengthening the ability of foreign partner governments to pursue accountability in a just and equitable manner; and bolstering the ability of civil society, media, and private sector actors to prevent corruption and push for accountability. With regard to the FCPA, the Strategy notes that the FBI’s International Corruption Unit, in conjunction with DOJ, has established squads in extraterritorial offices to investigate FCPA and kleptocracy cases.

“Preserving and strengthening the multilateral anti-corruption architecture,” including by bolstering anti-corruption institutions and implementation of existing frameworks and redoubling U.S. efforts in multilateral fora to push for anticorruption measures and advocate for strong corruption controls in any multilateral assistance.

“Improving diplomatic engagement and leveraging foreign assistance resources to achieve anti-corruption policy goals” by, among other things, elevating and expanding the scale of diplomatic engagement and foreign assistance; protecting anti-corruption actors and activists; bolstering the prevention and oversight capacities of willing governments, ensuring appropriate independence, checks and balances, and accountability; leveraging innovation in the fight against corruption; improving consistency and risk analysis across foreign assistance; and improving security assistance and integrating anti-corruption considerations into military planning, analysis, and operations.

The Strategy will require federal departments and agencies to submit annual reports to President Biden on progress made to achieve these objectives.

### **Looking Ahead**

Whether counted by enforcement action or by FCPA Matter, the level of enforcement activity in 2021 was the slowest in a decade. This remarkable falloff in activity may be the initial result of the steady decline in publicly-disclosed investigations witnessed over the last four years. If so, the level of activity could remain slow over the next few years. That said, policy changes initiated in the first year of the Biden administration may cause the number of FCPA-related investigations and enforcement actions to increase over the coming years. In the more immediate future, at least two companies, [Stericycle, Inc.](#) and [Honeywell International Inc.](#), disclosed accruals in 2021 in anticipation of the settlement of their FCPA investigations.

## **Appendix 1: FCPA-Related Violations Initiated or Announced in 2021 [By Defendant]**

Below is a list of the cases initiated or announced in 2021. Links in blue were initiated in prior years but announced or unsealed in 2021. Links in red were initiated in 2021.

### [United States of America v. Naeem Riaz Tyab, et al.](#)

- Naeem Riaz Tyab
- Mahamoud Adam Bechir
- Youssouf Hamid Takane
- Nouracham Bechir Niam

### [United States of America v. Afework Bereket](#)

### [United States of America v. Raymond Kohut](#)

### [United States of America v. Peter Weinzierl, et al.](#)

- Peter Weinzierl
- Alexander Waldstein

### [United States of America v. Bruno Luz](#)

### [United States of America v. Jorge Luz](#)

### [United States of America v. Deutsche Bank Aktiengesellschaft](#)

### [In the Matter of Deutsche Bank AG](#)

### [United States of America v. Jorge Cherrez Mino, et al.](#)

- Jorge Cherrez Mino
- John Luzuriaga Aguinaga

### [United States of America v. Luis Alvarez Villamar](#)

### [United States of America v. Luis Berkman](#)

### [United States of America v. Bryan Samuel Berkman](#)

### [United States of America v. Philip Lichtenfeld](#)

### [United States of America v. Sergio Rodrigo Mendez Mendizabal](#)

### [United States of America v. Arturo Carlos Murillo Prijic](#)

### [In the Matter of Amec Foster Wheeler Limited](#)

### [United States of America v. Amec Foster Wheeler Energy Limited](#)

### [United States of America v. Anthony Stimler](#)

### [United States of America v. Naman Wakil](#)

### [In the Matter of WPP plc](#)

### [United States of America v. Alvaro Pulido Vargas, et al.](#)

- Alvaro Pulido Vargas
- Jose Gregorio Vielma-Mora
- Emmanuel Enrique Rubio Gonzalez
- Carlos Rolando Lizcano Manrique
- Ana Guillermo Luis

### [In the Matter of Credit Suisse Group AG](#)

### [United States of America v. Credit Suisse Group AG](#)

### [United States of America v. Credit Suisse Securities \(Europe\) Limited](#)

### [United States of America v. Frederick Cushmore Jr.](#)