

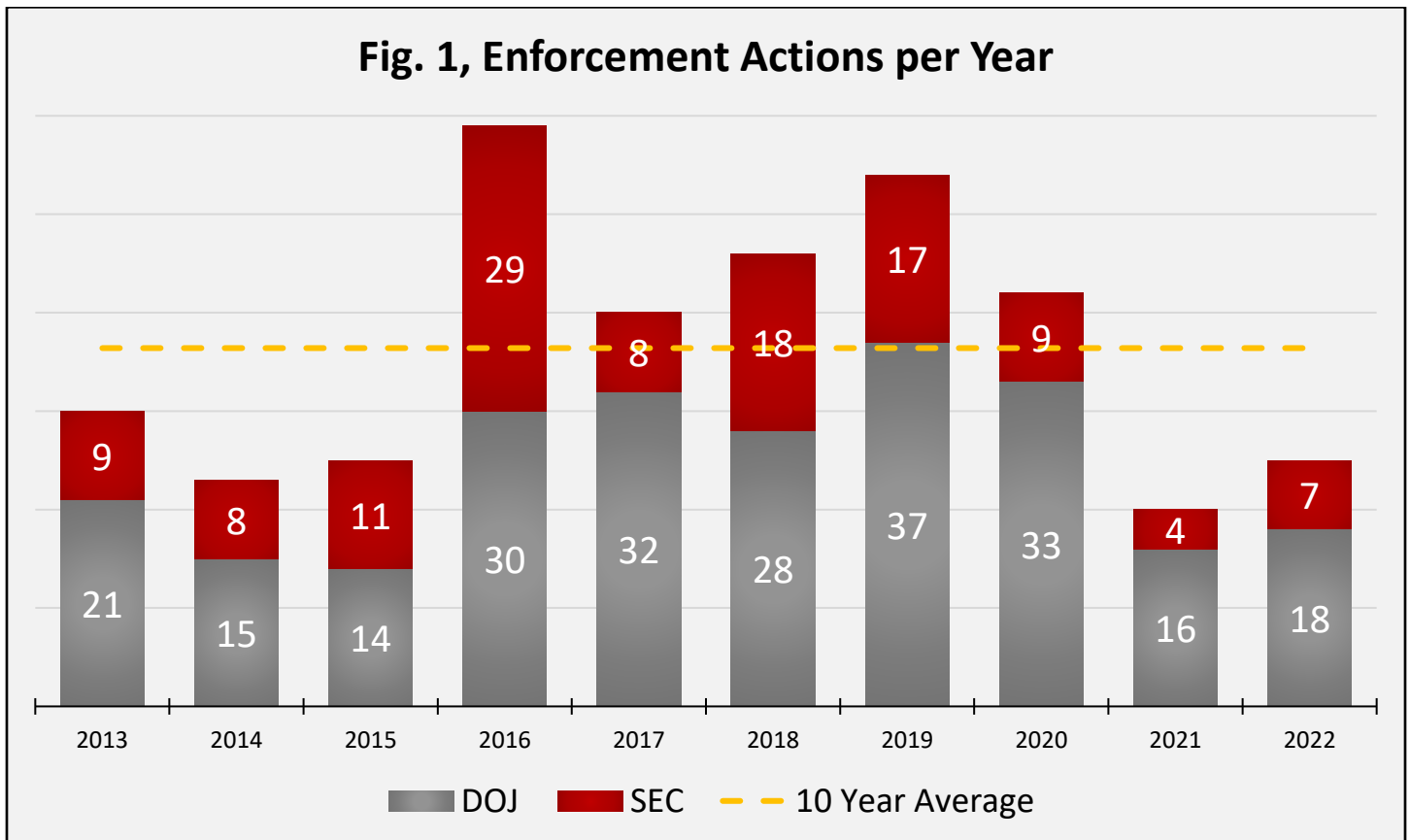
## 2022 FCPA Year in Review

The FCPA Clearinghouse’s 2022 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 25 FCPA-related [Enforcement Actions](#) in 2022. Though an increase from 2021, last year’s enforcement activity remained well 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 jump in enforcement activity last year led to a concomitant rise in [FCPA Matters](#), which are groups of related enforcement actions that share a common bribery scheme. The nine FCPA Matters initiated in 2022 represent an increase of 50 percent compared to 2021, but that level remains well below the ten-year average of 15. Figure 2 presents the number of FCPA Matters initiated per year for each of the last ten years.

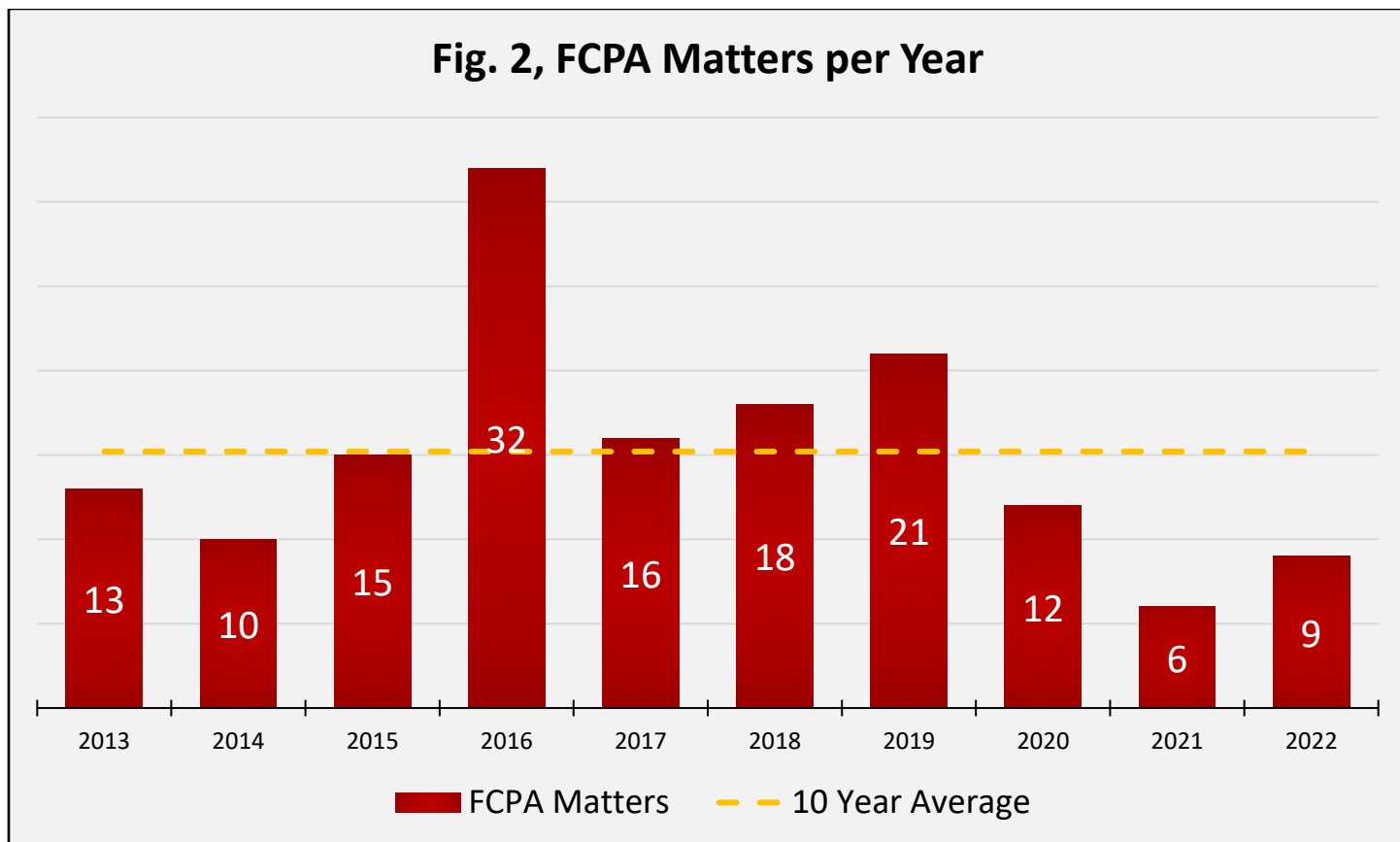
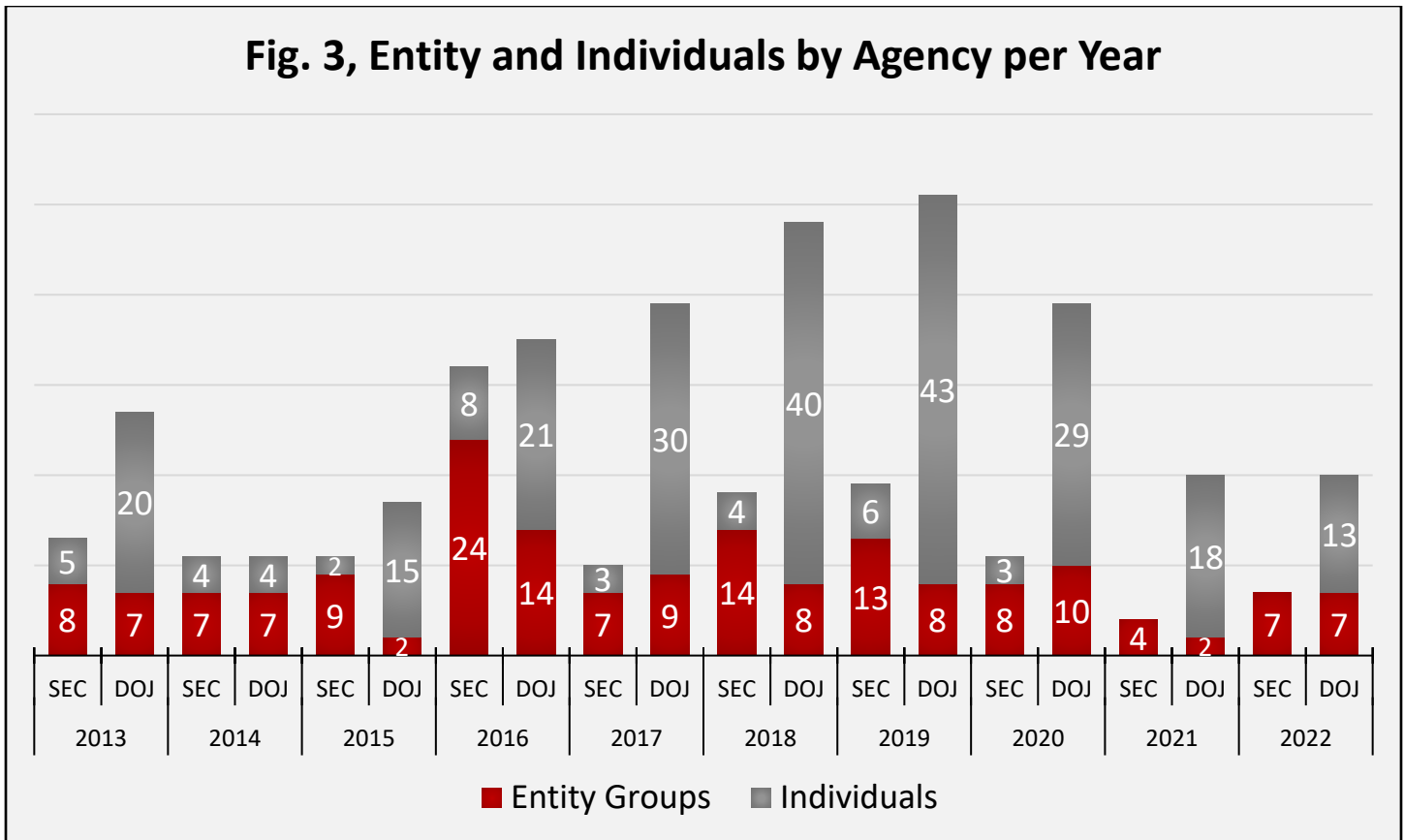


Figure 3 depicts the number of [Entity Groups](#) and individuals subject to FCPA-related enforcement activity over the last ten years. In 2022, the SEC sued seven entity groups and no individual defendants for FCPA-related violations, while the DOJ charged seven entity groups and 13 individual defendants. Notably, the SEC has not sued an individual defendant in the last two years.

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



The number of individuals criminally prosecuted by the DOJ for FCPA-related offenses has declined steadily over the past three years, dwindling from a high of 43 in 2019 to 13 in 2022, which is 50 percent below the ten-year average of 23. The total number of FCPA-related criminal prosecutions initiated in 2022 is likely to rise, however, as actions that were originally filed under seal last year may be publicly announced in subsequent months and years.

Notably, of the 13 individuals criminally charged in 2022, only four were charged with substantive FCPA offenses, as opposed to various related charges like money laundering. Moreover, all but one of the individual defendants were government officials or intermediaries with no direct connection to a major public company either prosecuted by U.S. authorities or involved in a publicly-disclosed investigation.

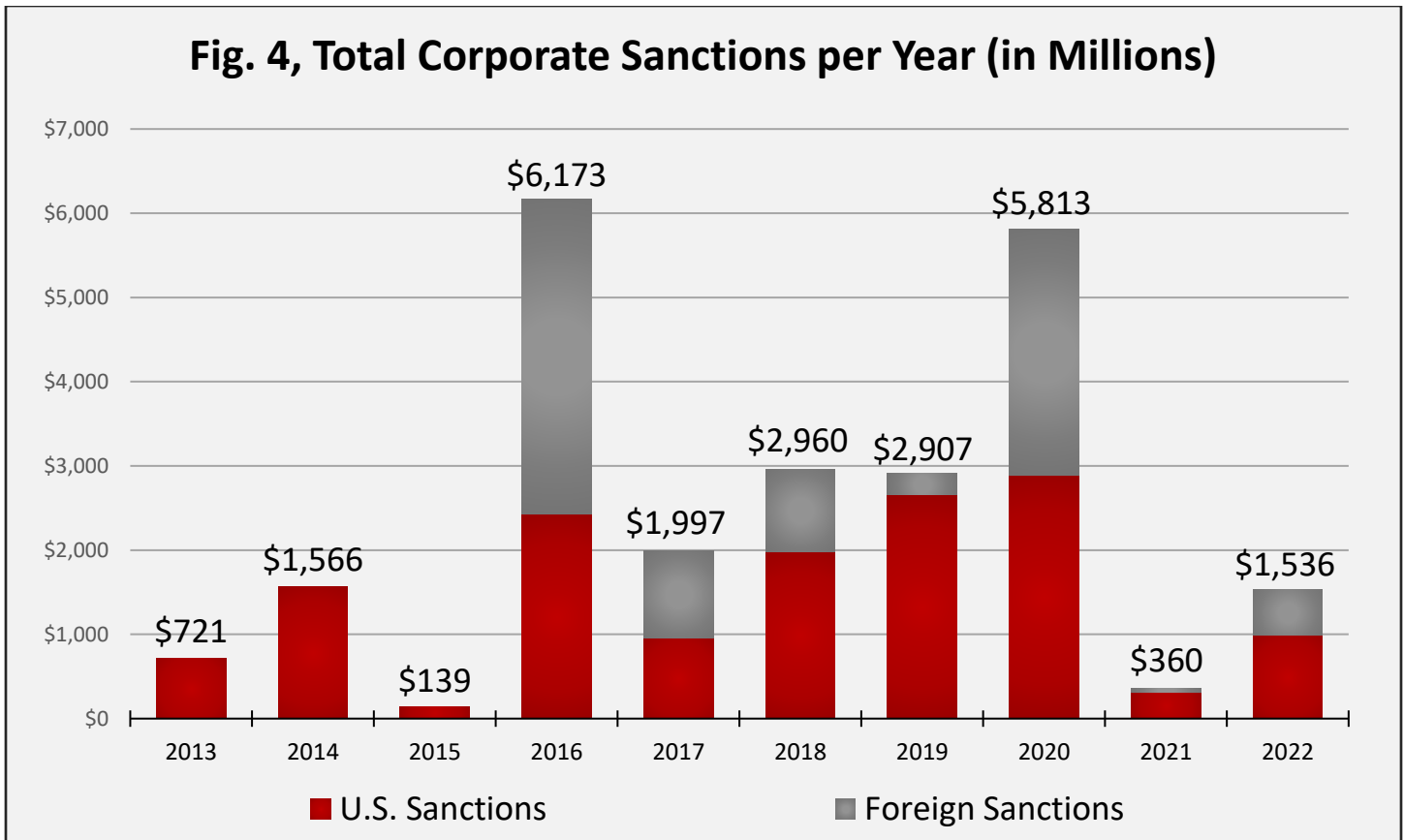
Appendix 1 to this report provides a list of all FCPA-related enforcement actions initiated in 2022, as well as a few actions that were announced in 2022 but initially filed under seal in prior years. The latter actions are noted here for reference only; they are not included in the 2022 annual statistics.

### **Sanctions**

Though enforcement activity in 2022 increased by 25% year over year, total corporate sanctions more than quadrupled during the same time period. Last year, U.S. regulators imposed just over \$1.5 billion in sanctions against corporations in FCPA-related enforcement actions, compared to \$360 million in 2021. Though a significant increase, 2022 sanctions still lagged behind the blockbuster years of the late teens.

The average global sanction imposed on entity groups in 2022 (\$154 million) was also below the ten-year average of \$190 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 pursuant to global resolutions or parallel foreign actions.

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

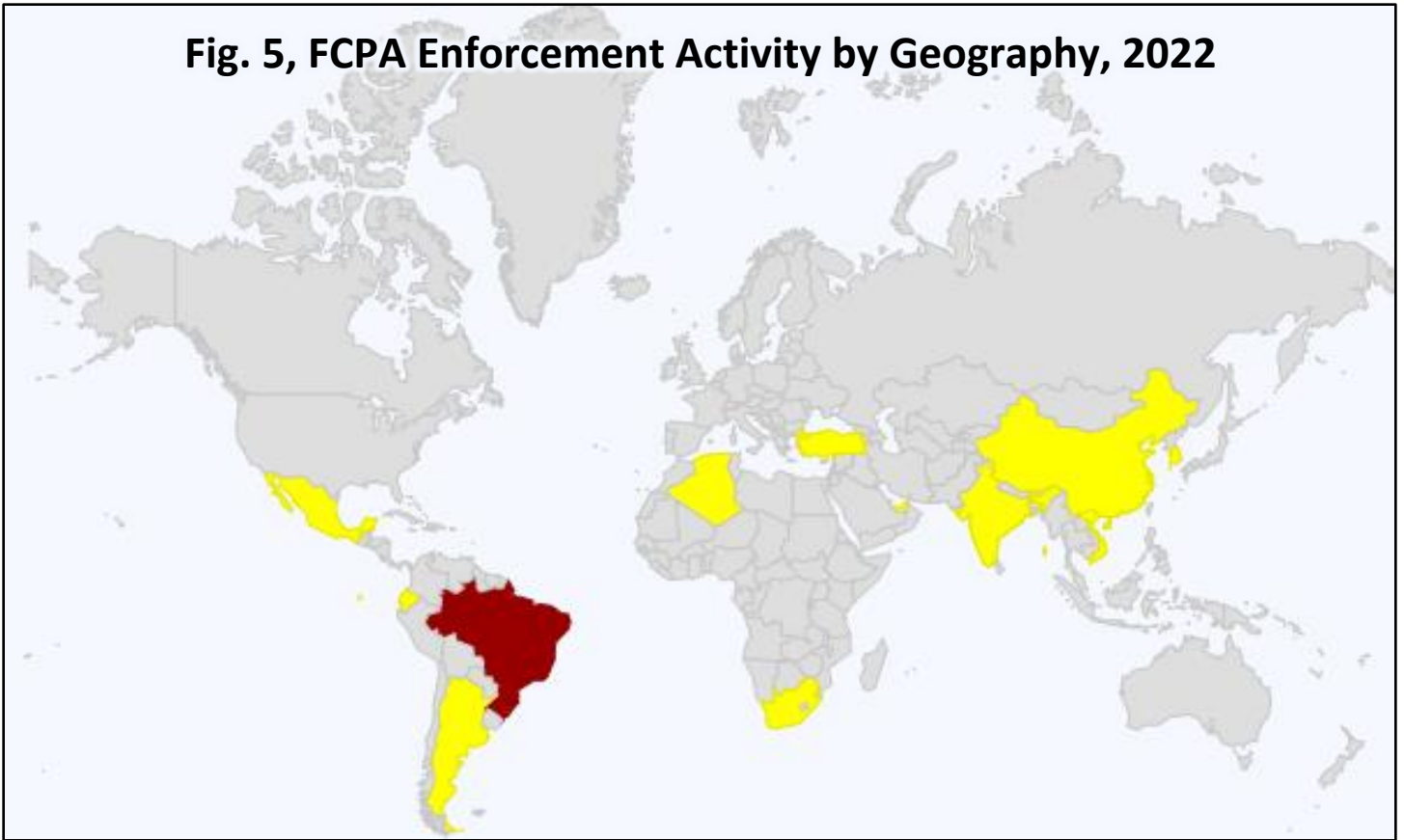


As in past years, sanctions imposed on just a small minority of companies made up the bulk of the sanctions that government regulators imposed on FCPA violators in 2022. Specifically, sanctions imposed on [Glencore plc](#) (\$701 million), [ABB Ltd.](#) (\$400 million), and [Honeywell International Inc.](#) (\$160 million), three of the ten companies charged with FCPA-related violations in 2022, comprised 82 percent of the total sanctions imposed that year.

### **Geography**

The FCPA Clearinghouse identified 12 countries implicated in the enforcement actions associated with the nine FCPA Matters initiated in 2022. For the second year running, Brazil claimed the top spot as the country most frequently implicated in FCPA-related bribery schemes resulting in enforcement actions, with four separate schemes. The remaining 11 countries implicated in 2022 all had one bribery scheme each. When examined by region, Latin America was most frequently implicated in FCPA-related bribery schemes, with almost half of the schemes. Asia came in second place with just over a quarter of the schemes. The regional rankings for 2022 are as follows: Latin America (7), Asia (4), the Middle East (2), and Africa (2). Figure 5 shows all the countries implicated in FCPA enforcement actions in 2022.

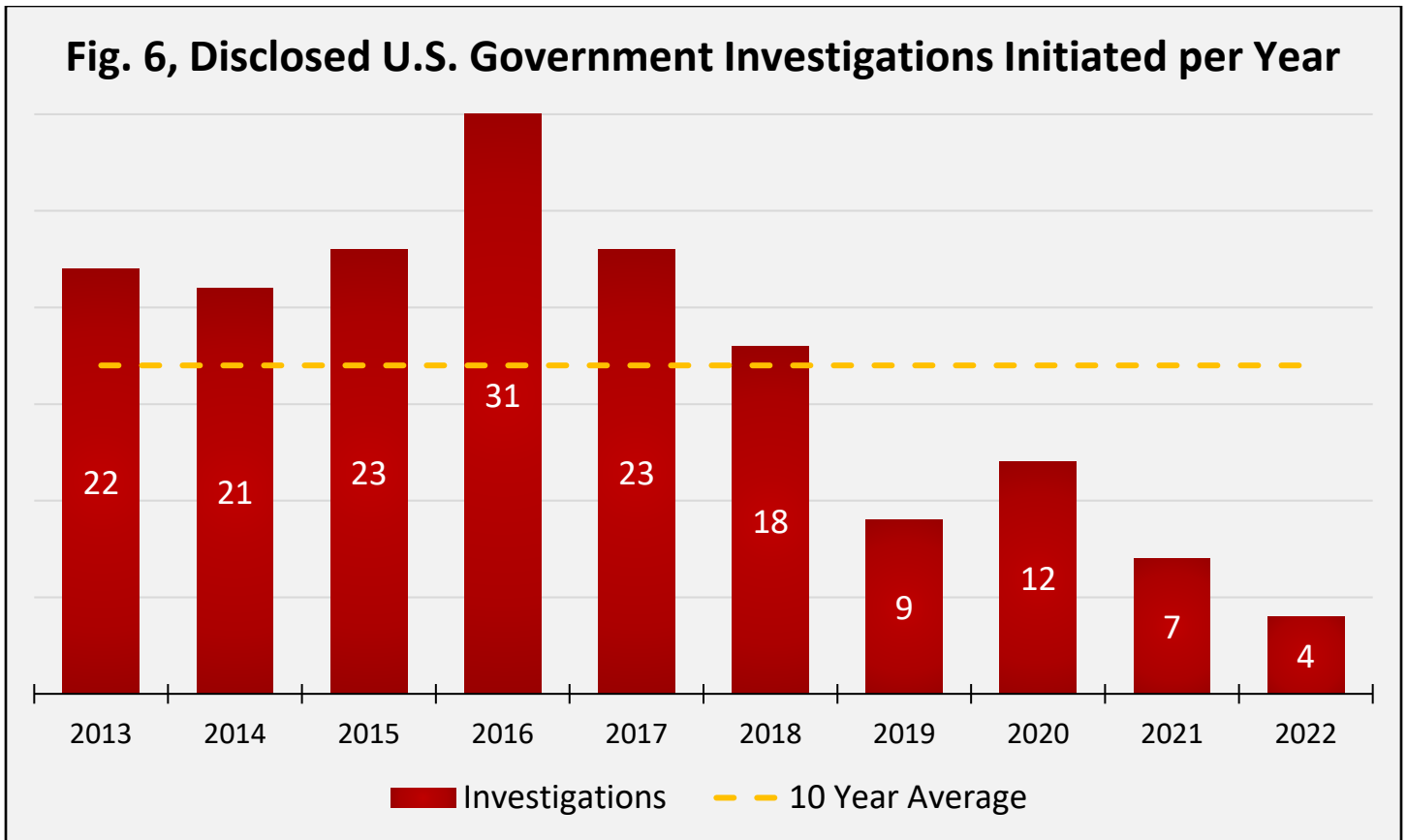
**Fig. 5, FCPA Enforcement Activity by Geography, 2022**



### **Investigations**

Only four companies disclosed in their SEC filings a new FCPA-related [Investigation](#) commenced by U.S. authorities in 2022 ([Leidos Holdings, Inc.](#), [Boston Scientific Corporation](#), [Millicom International Cellular S.A.](#), and [Arthur J. Gallagher & Co.](#)). This marks the fourth year in a row that disclosed investigations have tracked well below the ten-year average of 17, a decline that appears to have commenced in 2018. In the ten years between 2008 and 2017 inclusive, an average of 22 companies disclosed new FCPA investigations by the SEC or DOJ each year. Since 2018, on the other hand, an average of only 10 companies have disclosed new government investigations each year. Some of these disclosed totals may increase over time, as there can be a lag between the onset of an investigation and a company's first disclosure of it. Figure 6 shows the number of FCPA investigations initiated by the U.S. government in each of the last ten years.

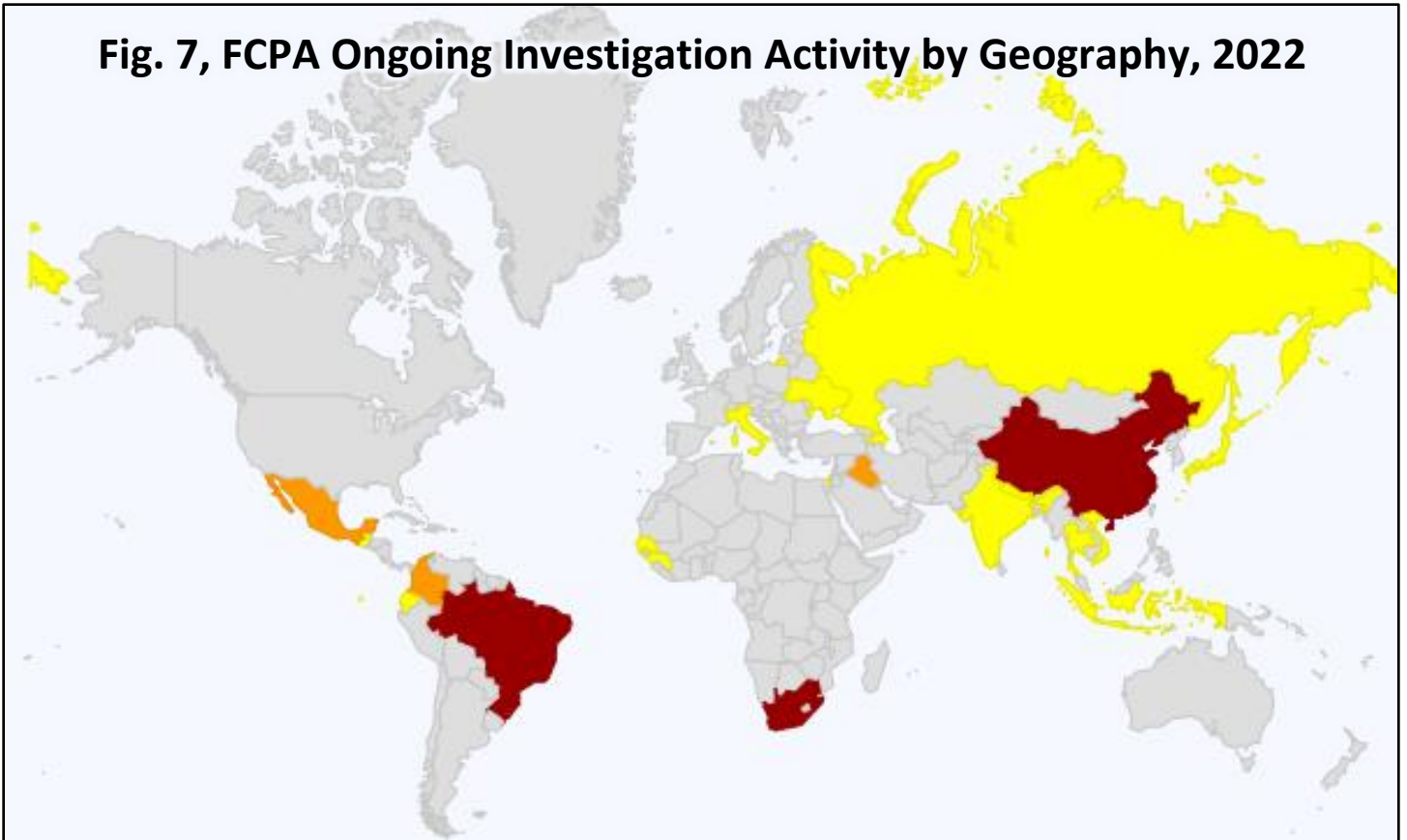
**Fig. 6, Disclosed U.S. Government Investigations Initiated per Year**



As of the close of 2022, at least 35 companies appear to be the subject of ongoing FCPA-related investigations by U.S. authorities. At least one additional company ([Ideanomics, Inc.](#)) first disclosed an FCPA-related internal investigation in 2022 without disclosing a related government inquiry.

The three countries most frequently cited in connection with ongoing FCPA-related investigations in 2022 remain the same as in 2021. Brazil, China, and South Africa all tied for the top spot on the list, with at least three companies disclosing investigations into possible FCPA-related misconduct in each country. When examined by region, Latin America took the top spot, with just under 35 percent of all FCPA-related investigations citing possible misconduct in the region. Asia came in second place with just over a quarter of investigations. The regional rankings for 2022 are as follows: Latin America (8), Asia (6), Africa (4), Europe (3), and the Middle East (2). Figure 7 shows the countries implicated in ongoing FCPA-related investigations as of the close of 2022.

**Fig. 7, FCPA Ongoing Investigation Activity by Geography, 2022**



According to information disclosed in SEC filings and other public documents, last year ten entity groups disclosed that either the SEC, DOJ or both agencies had resolved investigations into potential FCPA violations by the companies. The SEC resolved six publicly-disclosed investigations by enforcement action (ABB Ltd., GOL Linhas Aereas Inteligentes S.A., Honeywell International Inc., KT Corporation, Stericycle, Inc., and Tenaris S.A.) and closed at least one investigation without taking further action (Cisco Systems, Inc.). Though the SEC also filed an enforcement action against Oracle Corporation in 2022, that company did not publicly disclose the investigation in advance of resolution.

The DOJ resolved five publicly-disclosed investigations by enforcement action last year ([ABB Ltd.](#), [Glencore plc](#), [GOL Linhas Aereas Inteligentes S.A.](#), [Honeywell International Inc.](#), and [Stericycle, Inc.](#)) and concluded three investigations without pursuing any further action ([Cisco Systems, Inc.](#), [Frank's International N.V./Expro Group Holdings N.V.](#), and [Tenaris S.A.](#)). The DOJ also declined to prosecute two companies pursuant to the agency's FCPA Corporate Enforcement Policy ([Jardine Lloyd Thompson Group Holdings Ltd.](#) and [Safran S.A.](#)), but only Jardine Lloyd Thompson Group publicly disclosed its investigation prior to resolution.

### **Related Securities Class Action Litigation**

Last March, plaintiffs filed the sole FCPA-related [securities class action complaint](#) of 2022 against [Telefonaktiebolaget LM Ericsson](#), a Swedish multinational networking and telecommunications equipment and services company. Plaintiffs alleged that Ericsson settled [enforcement actions with the SEC and DOJ in December 2019](#) stemming from what the complaint describes as a well-documented history of using bribes to secure business in countries throughout the Middle East and Asia, including alleged continued improper payments in Iraq, even after the 2019 enforcement actions were resolved. The complaint further alleges that as this additional bribery came to light, investors were harmed by the concomitant decline in share prices.

Notably, in a company [press release issued on October 22, 2021](#), Ericsson disclosed that it had received correspondence from the DOJ stating that the Department had determined that the company had breached its

obligations under the [2019 deferred prosecution agreement](#). Ericsson later confirmed that the breach was connected to misconduct in Iraq that the company had discovered in an [internal investigation in 2019](#). On December 14, 2022, Ericsson announced in a [press release](#) that it had agreed to a one-year extension to the corporate monitorship imposed in the 2019 settlement. The monitorship will now run through June 2024.

### **Voluntary Disclosure by Corporate Defendants**

Both the SEC and the DOJ have emphasized the benefits that can accrue to companies that voluntarily disclose potential FCPA-related misconduct. In 2017, the DOJ announced a new [FCPA Corporate Enforcement Policy](#), the formalization of a pilot program the agency had initiated the prior year, that was intended to allow the agency to efficiently identify and punish criminal conduct and to provide greater certainty for companies considering whether to disclose voluntarily a potential FCPA violation to the Department. Pursuant to the policy, there will be a presumption that a company that “has voluntarily self-disclosed misconduct in an FCPA matter, fully cooperated, and timely and appropriately remediated” will receive a declination, unless some aggravating circumstances exist. If a criminal resolution is required, however, companies that do all of the above can expect to receive “a 50% reduction off of the low end of the U.S. Sentencing Guidelines (U.S.S.G.) fine range, except in the case of a criminal recidivist,” while a similar company that does everything but voluntarily self-disclose can only receive a maximum 25 percent reduction off the low end of the U.S.S.G. fine range.<sup>1</sup> Although the SEC does not quantify the potential benefit stemming from a voluntary disclosure, its [2001 “Seaboard” Report](#)<sup>2</sup> explains that it has broad discretion to grant leniency to cooperating companies based on four criteria, one of which is voluntarily self-disclosure of the misconduct.

The benefits of voluntary disclosure can be substantial. Between 2013 and 2022, companies that received credit for voluntarily disclosing FCPA-related misconduct paid average sanctions of \$90.7 million, while companies that did not receive credit for voluntarily disclosure in their resolutions with the DOJ and SEC paid average sanctions of \$237.8 million. Figure 8 depicts the average sanctions paid by companies that received credit for voluntary disclosure and that did not receive credit for voluntarily disclosure over the past ten years.

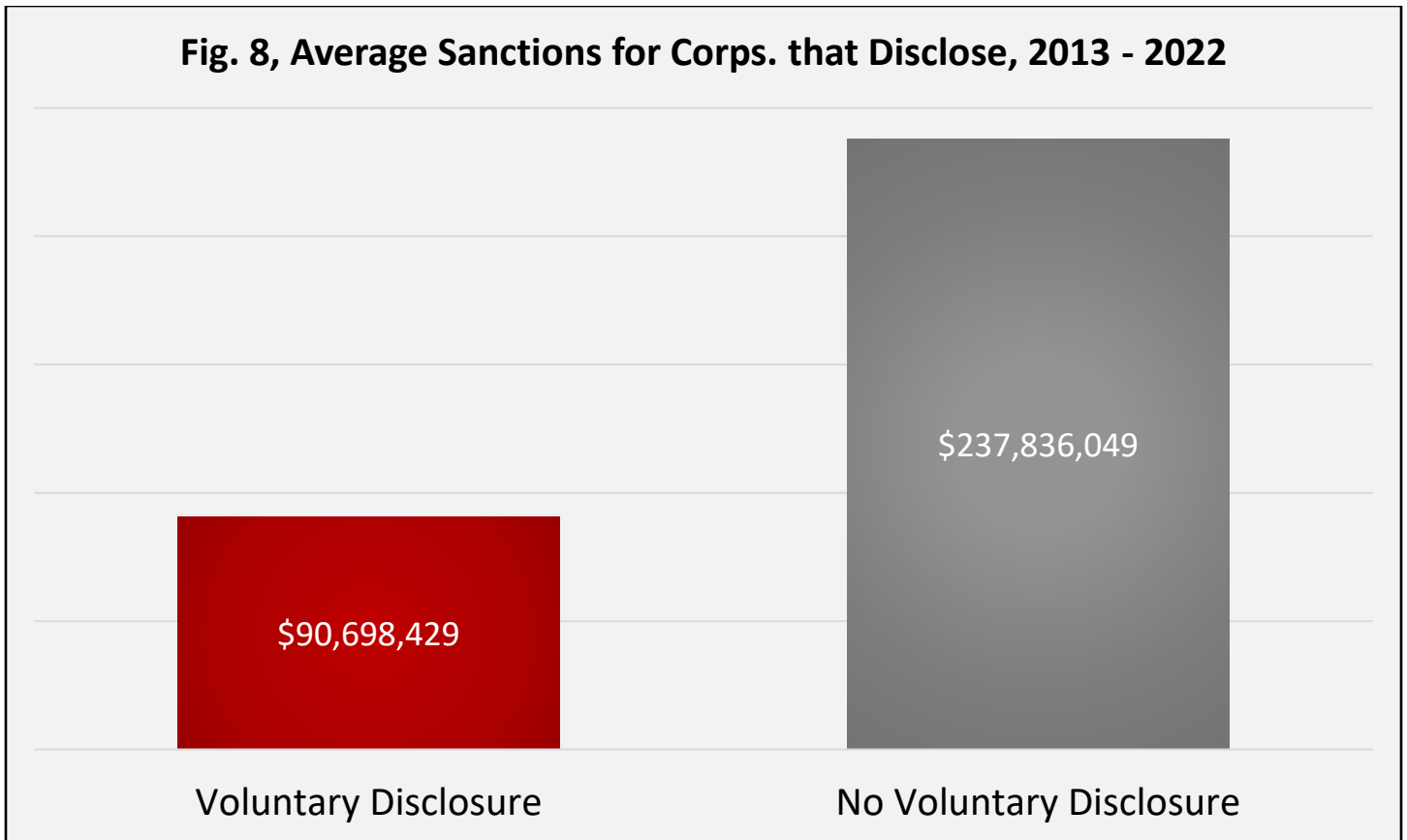
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<sup>1</sup> On January 17, 2023, the DOJ [announced](#) changes to the FCPA Corporate Enforcement Policy that could impact whether and when companies voluntarily self-disclose potential FCPA violations to the Department. Under the revised policy, prosecutors may now award declinations to companies that have self-disclosed, cooperated, and remediated even if aggravating factors are present, if: (1) the company’s disclosure was immediate, (2) at the time of the misconduct and the disclosure, the company had an effective compliance program and system of internal accounting controls, and (3) the company’s cooperation and remedial actions were “extraordinary.” Companies that voluntarily self-disclose misconduct, fully cooperate, and timely and appropriately remediate, but for whom a criminal resolution is still warranted, can now receive a discount of up to 75 percent off the low end of the U.S.S.G. fine range, up from 50 percent under the prior policy. For companies that do not voluntarily self-disclose but still fully cooperate and timely and appropriately remediate, prosecutors will recommend up to a 50% reduction off of the low end of the Guidelines fine range, up from 25 percent under the prior policy. For criminal recidivists, the reduction will likely not be off the low end of the range. The Clearinghouse will continue to monitor these changes to see how they affect voluntary self-disclosure going forward.

<sup>2</sup> See SEC’s 2001 Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, commonly known as the Seaboard Report.



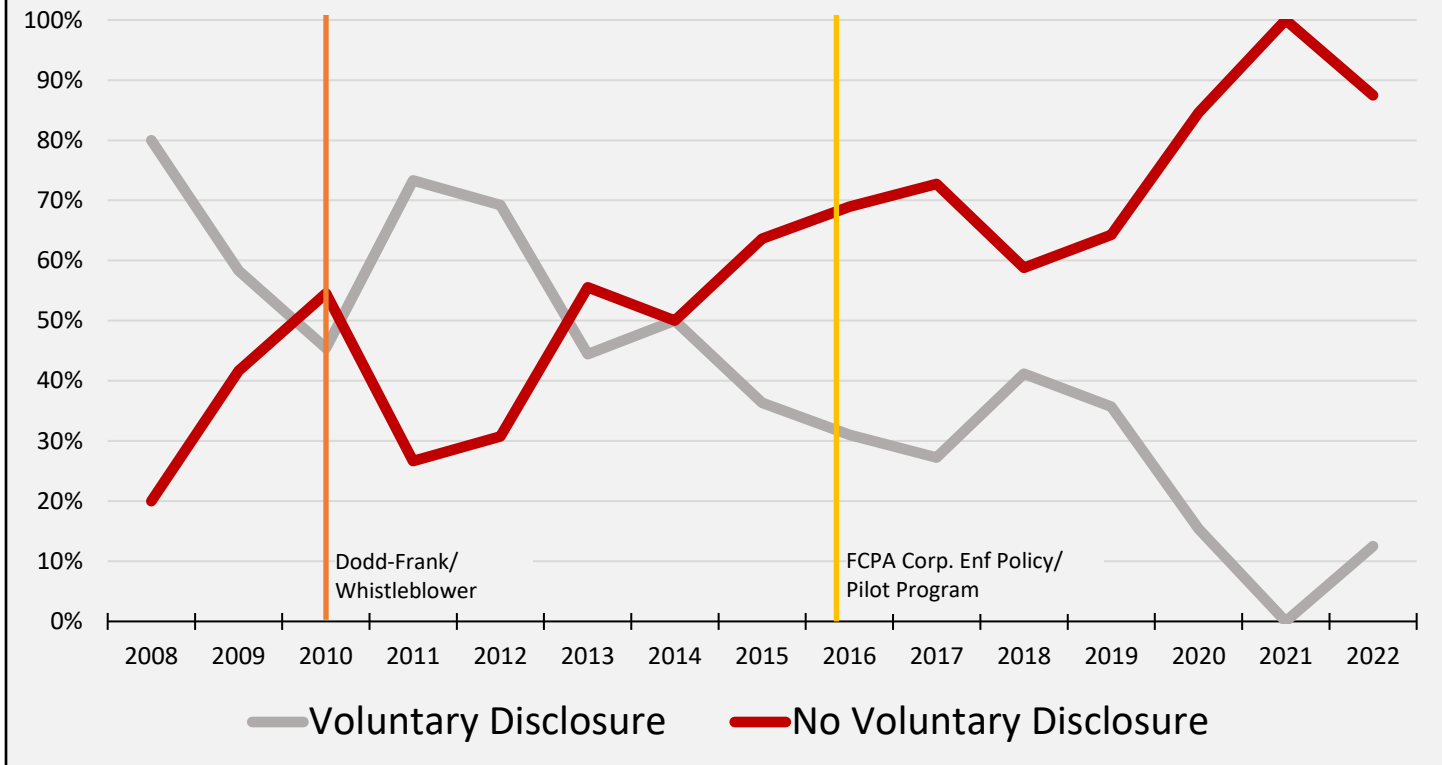
**Fig. 8, Average Sanctions for Corps. that Disclose, 2013 - 2022**



Although the exact impact of a voluntary disclosure is hard to quantify in light of the many factors that can influence a sanctions award, including the scope of the misconduct, the level of cooperation generally, remedial efforts undertaken by the company, and even the size of the company itself, the chart does reflect that voluntary disclosure may benefit a company – perhaps significantly – once enforcement is initiated.

Despite this benefit, the number of companies that have received credit for voluntarily disclosing potential FCPA-related misconduct has declined in recent years. Figure 9 shows the percentage of entities expressly granted voluntary disclosure credit in FCPA-related resolution documents with the SEC or DOJ over the last 15 years. The approximate dates of the passage of the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#), which created the [SEC's whistleblower program](#), and the start of the DOJ's FCPA Corporate Enforcement Policy, are noted for reference.

**Fig. 9, Percentage of Companies that Self-Report**



A number of factors may explain the drop in voluntary disclosure credit awarded in FCPA enforcement actions. Fewer companies may choose to disclose based on a cost-benefit analysis comparing estimated sanctions minus disclosure credit with estimated sanctions absent disclosure credit, but adjusted to reflect the likelihood of the misconduct never coming to light. Alternatively (or in addition), agencies may more frequently learn about potential FCPA violations through whistleblower reports rather than through voluntary disclosures. The SEC's whistleblower program, created by the 2010 Dodd-Frank Act, encourages whistleblowers to report misconduct early, before other evidence of the misconduct comes to light, in order to secure a percentage of any sanctions obtained by the SEC in an enforcement action derived from the whistleblower tip. The program thus puts companies in a race with potential whistleblowers to be the first to report misconduct. It could also be possible that due to other factors, the DOJ is learning about misconduct earlier, before companies have the opportunity to voluntarily disclose.

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

Each year seems to bring further refinement to the DOJ's policies addressing corporate enforcement, and 2022 proved no different. Building on several policy changes [announced](#) in 2021 that were intended to create a tougher enforcement environment for corporate offenders, Deputy Attorney General Lisa O. Monaco laid out additional guidance on DOJ corporate enforcement in a new [memo](#) released on September 15, 2022. By emphasizing the department's interest in individual accountability and its expectation of corporate cooperation, the memo covered much of the same ground as prior policy updates beginning with the 2015 [Yates Memo](#). Nevertheless, the memo did clarify the DOJ's expectations for corporations involved in DOJ enforcement actions. Key policy changes and clarifications are set forth below.

First, Monaco instructed prosecutors to file charges against individuals prior to or at the same time as reaching a resolution with the corporation, and as part of the Department's efforts to do so, the DOJ's policy, going forward, would require companies to disclose any evidence of individual misconduct more quickly.

Second, she noted the problem of recidivism among corporate offenders, but allowed that only certain kinds of prior misconduct, such as conduct involving the same personnel or management, would receive greater weight in determining the types and severity of resolutions the DOJ would reach with corporate offenders.

Third, Monaco re-emphasized the expectation for companies to voluntarily self-report misconduct, noting that the DOJ would not seek a guilty plea or compliance monitor absent “aggravating factors” when the company voluntarily self-disclosed, cooperated, and undertook remedial measures.

Fourth, she reiterated that the Department had no presumption in favor of monitorships, and that it would not seek to impose one if the company had implemented and tested an effective compliance program prior to resolution of the action.

Finally, Monaco directed prosecutors to consider whether a company’s compensation system rewards compliance-promoting behavior and imposes sanctions on those who contribute to the misconduct through mechanisms like clawback provisions and escrowed compensation. She indicated that further instructions for prosecutors on how to reward corporations that develop and apply compensation clawbacks or similar policies would be forthcoming.

### **Jarkesy and Cochran**

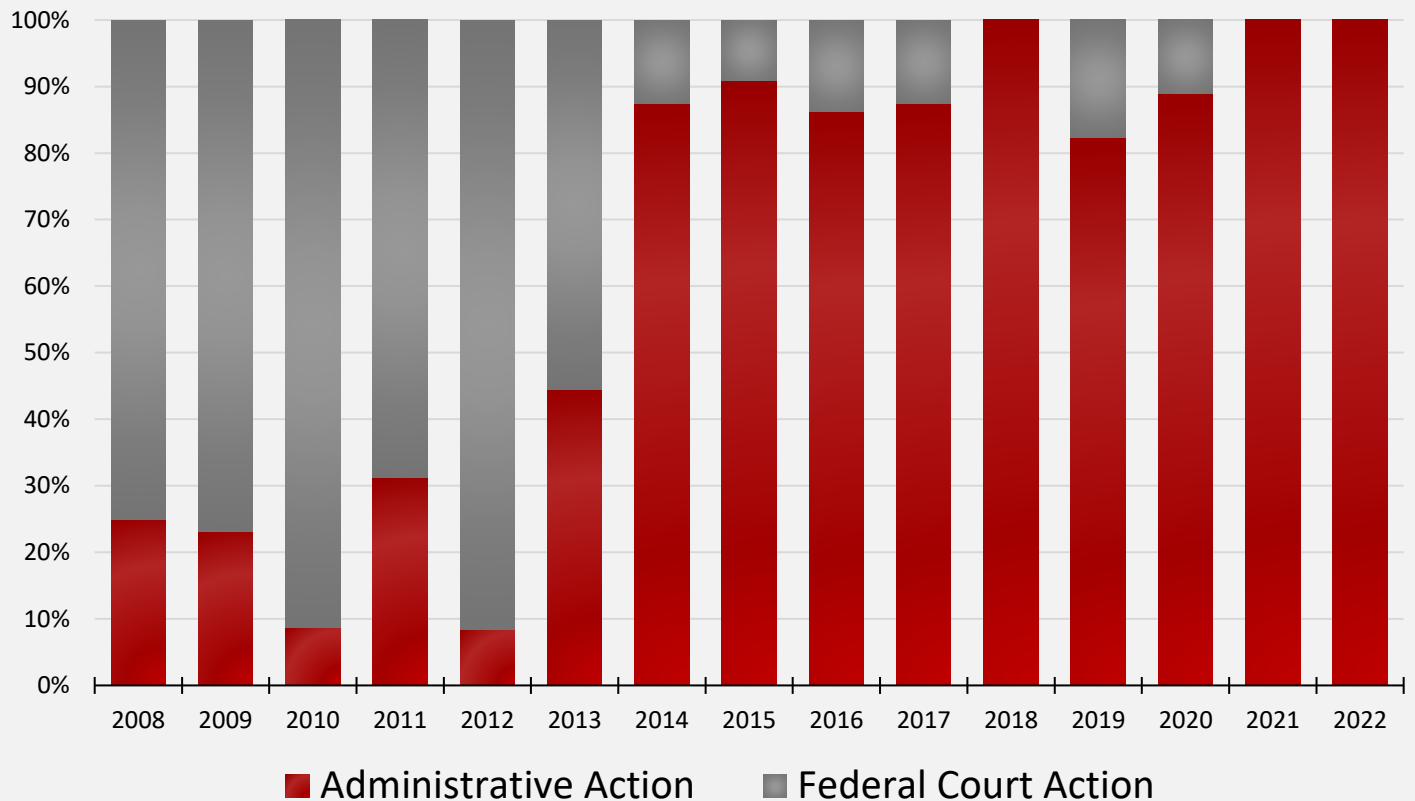
In the Clearinghouse’s mid-year report, we highlighted two recent decisions out of the Fifth Circuit Court of Appeals, [Cochran v. SEC](#) and [Jarkesy v. SEC](#), both of which could have far-reaching consequences for the SEC’s use of administrative law judges (“ALJs”). In *Cochran*, the Fifth Circuit held on December 13, 2021, that district courts have jurisdiction to consider claims challenging the constitutionality of the SEC’s ongoing administrative proceedings. Historically, respondents in administrative actions had to wait until after an adverse order from the administrative court before challenging that order in district court. The Fifth Circuit followed up that decision with its opinion in *Jarkesy* on May 18, 2022, where the court held that SEC ALJs were unconstitutionally insulated from presidential removal, among other constitutional infirmities. Specifically, the court found that:

- (1) the SEC’s in-house adjudication of Petitioners’ case violated their Seventh Amendment right to a jury trial; (2) Congress unconstitutionally delegated legislative power to the SEC by failing to provide an intelligible principle by which the SEC would exercise the delegated power, in violation of Article I’s vesting of “all” legislative power in Congress; and (3) statutory removal restrictions on SEC ALJs violate the Take Care Clause of Article II.

While the Fifth Circuit has [denied](#) the SEC’s petition for a rehearing en banc, the SEC may choose to appeal the decision to the Supreme Court in light of the significant impact the decision may have on the SEC’s enforcement approach.

While not FCPA cases, *Cochran* and *Jarkesy* could have significant implications for future FCPA enforcement. Although the SEC has statutory authority to bring FCPA enforcement actions in either federal or administrative courts, administrative actions in the FCPA context were rare prior to 2010 in large part because the SEC generally could not seek monetary penalties in those proceedings. Following the passage of the Dodd-Frank Act in 2010, the SEC obtained the authority to impose civil monetary penalties in administrative proceedings in which the SEC seeks a cease-and-desist order. Since passage of the Dodd-Frank Act, the SEC switched from filing the majority of FCPA enforcement actions in federal court to bringing the overwhelming majority in administrative court. Figure 10 shows the percentage of SEC actions filed in administrative and federal courts over the last 15 years.

**Fig. 10, Percent of SEC FCPA Admin. Proceedings by Year**



The Fifth Circuit's opinion in *Cochran* created a circuit split, with five other circuits adhering to the historical view that respondents in administrative actions had to wait for adverse orders from the administrative court before bringing a challenge in district court. The Supreme Court has granted the SEC's petition for certiorari to review the Fifth Circuit's opinion in *Cochran*, and the case was [argued](#) on November 7, 2022. The Court's ruling could open the door to greater collateral attacks against SEC procedures.

### **Looking Ahead**

Whether counted by enforcement action or by FCPA Matter, the level of enforcement activity in 2022 remains well off the highs of 2016 to 2019. While this may represent the natural ebb and flow of FCPA litigation, the similar falloff in reported investigations since 2018 portends several years of lower than average enforcement activity to come. In the more immediate future, at least two companies, [Expro Group Holdings N.V.](#) and [Clear Channel Outdoor Holdings Inc.](#), disclosed accruals in 2022 in anticipation of the settlement of FCPA investigations.

**Appendix 1:**  
**FCPA-Related Violations Initiated or Announced in 2022 [By Defendant]**

Below is a list of the FCPA-related enforcement actions initiated or announced in 2022. Links in blue were initiated in prior years but announced or unsealed in 2022. Links in red were initiated in 2022.

[United States of America v. Cary Yan, et al.](#)

- Cary Yan
- Gina Zhou

[In the Matter of KT Corporation](#)

[United States of America v. Daniel D’Andrea Golindando, et al.](#)

- Daniel D’Andrea Goindando
- Luis Javier Sanchez Rangel

[United States of America v. Lionel Hanst](#)

[In Re: Jardine Lloyd Thompson Group Holdings Ltd.](#)

[United States of America v. Carlos Ramon Polit Faggioni](#)

[United States of America v. Fernando Martinez Gomez](#)

[United States of America v. Charles Hunter Hobson](#)

[United States of America v. Stericycle, Inc.](#)

[In the Matter of Stericycle, Inc.](#)

[United States of America v. Jhonnatan Teodoro Marin Sanguino](#)

[United States of America v. Glencore International A.G.](#)

[In the Matter of Tenaris S.A.](#)

[United States of America v. Ralph Steinmann, et al.](#)

- Ralph Steinmann
- Luis Fernando Vuteff

[United States of America v. Esteban Eduardo Merlo Hidalgo, et al.](#)

- Esteban Eduardo Merlo Hidalgo
- Cristian Patricio Pintado Garcia
- Luis Lenin Maldonado Matute

[United States of America v. Rixon Rafael Moreno Oropeza](#)

[United States of America v. GOL Linhas Aereas Inteligentes, S.A.](#)

[In the Matter of GOL Linhas Aereas Inteligentes S.A.](#)

[In the Matter of Oracle Corporation](#)

[United States of America v. ABB Ltd.](#)

[United States of America v. ABB Management Services Ltd.](#)

[United States of America v. ABB South Africa \(Pty\) Ltd.](#)

[In the Matter of ABB Ltd.](#)

[United States of America v. UOP, LLC, d/b/a Honeywell UOP](#)

[In the Matter of Honeywell Inc.](#)

[In Re: Safran S.A.](#)