

## 2023 Q3 Report

The FCPA Clearinghouse’s quarterly report provides an overview of some of the more notable trends and statistics in FCPA enforcement activity to emerge during the third quarter of 2023.

### **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.

FCPA enforcement activity in the third quarter of 2023 continued the slow and steady pace set over the last few years, with the DOJ initiating three new FCPA-related **Enforcement Actions**, adding a new defendant to an existing action, adding an FCPA charge to an existing indictment, and entering into a non-prosecution agreement in lieu of filing an enforcement action. The SEC instituted and simultaneously settled four administrative actions against five corporate defendants. Figure 1 shows all enforcement actions filed, announced, or unsealed between July and September of 2023.

## Fig. 1, FCPA-Related Enforcement Actions Initiated or Announced in Q3, 2023

Case	Date Initiated	Date Announced/ Unsealed	Sanctions
<a href="#">U.S. v. Amadou Kane Diallo</a>	May 3, 2023	Sept. 20, 2023 (FCPA charge added)	Ongoing
<a href="#">U.S. v. Corporacion Financiera Colombiana S.A.</a>	Aug. 1, 2023	Aug. 10, 2023	\$69,230,000
<a href="#">U.S. v. Javier Alejandro Aguilar Morales</a>	Aug. 3, 2023	Aug. 3, 2023	Ongoing
<a href="#">In the Matter of Grupo Aval Acciones y Valores S.A. and Corporacion Financiera Colombiana S.A.</a>	Aug. 10, 2023	Aug. 10, 2023	\$40,269,289
<a href="#">In the Matter of 3M Company</a>	Aug. 25, 2023	Aug. 25, 2023	\$6,581,618
<a href="#">U.S. v. Glenn Oztemel, et al.</a>			
Gary Oztemel	Aug. 29, 2023	Aug. 29, 2023	Ongoing
Glenn Oztemel	Feb. 14, 2023	Feb. 17, 2023	Ongoing
Eduardo Innecco	Feb. 14, 2023	Feb. 17, 2023	Ongoing
<a href="#">U.S. v. Orlando Alfonso Contreras Saab</a>	Sept. 11, 2023	Unannounced	Ongoing
<a href="#">In the Matter of Clear Channel Outdoor Holdings, Inc.</a>	Sept. 28, 2023	Sept. 28, 2023	\$26,116,487
<a href="#">In Re Albemarle Corporation</a>	Sept. 28, 2023	Sept. 29, 2023	\$114,891,353
<a href="#">In the Matter of Albemarle Corporation</a>	Sept. 29, 2023	Sept. 29, 2023	\$103,618,310

In [U.S. v. Amadou Kane Diallo](#), the DOJ added an FCPA anti-bribery charge to an indictment alleging wire fraud and money laundering in connection with an alleged scheme to bribe Senegalese officials in order to obtain a land grant in Senegal.

Both the SEC and the DOJ [initiated and simultaneously settled charges](#) against the Grupo Aval Acciones y Valores S.A. (“Grupo Aval”) subsidiary, Corporacion Financiera Colombiana S.A. (“Corficolombiana”), for its role in a bribery scheme in Colombia connected to the Brazilian conglomerate Odebrecht S.A., which was subject to its own FCPA enforcement actions in 2016. The SEC also charged Grupo Aval with violating the FCPA’s accounting provisions.

In [U.S. v. Javier Alejandro Aguilar Morales](#), the DOJ filed charges against an oil and commodities trader for [Vitol, Inc.](#) in connection with an alleged bribery scheme involving the Mexican state-owned oil company, [Petroleos Mexicanos S.A. de C.V.](#) The DOJ [settled with Vitol in 2020](#) for bribery schemes in Brazil, Ecuador, and Mexico.

In an [administrative proceeding](#) filed against [3M Company](#), the SEC alleged that one of 3M’s Chinese subsidiaries arranged for improper travel for Chinese health care officials as part of the company’s marketing and outreach efforts.

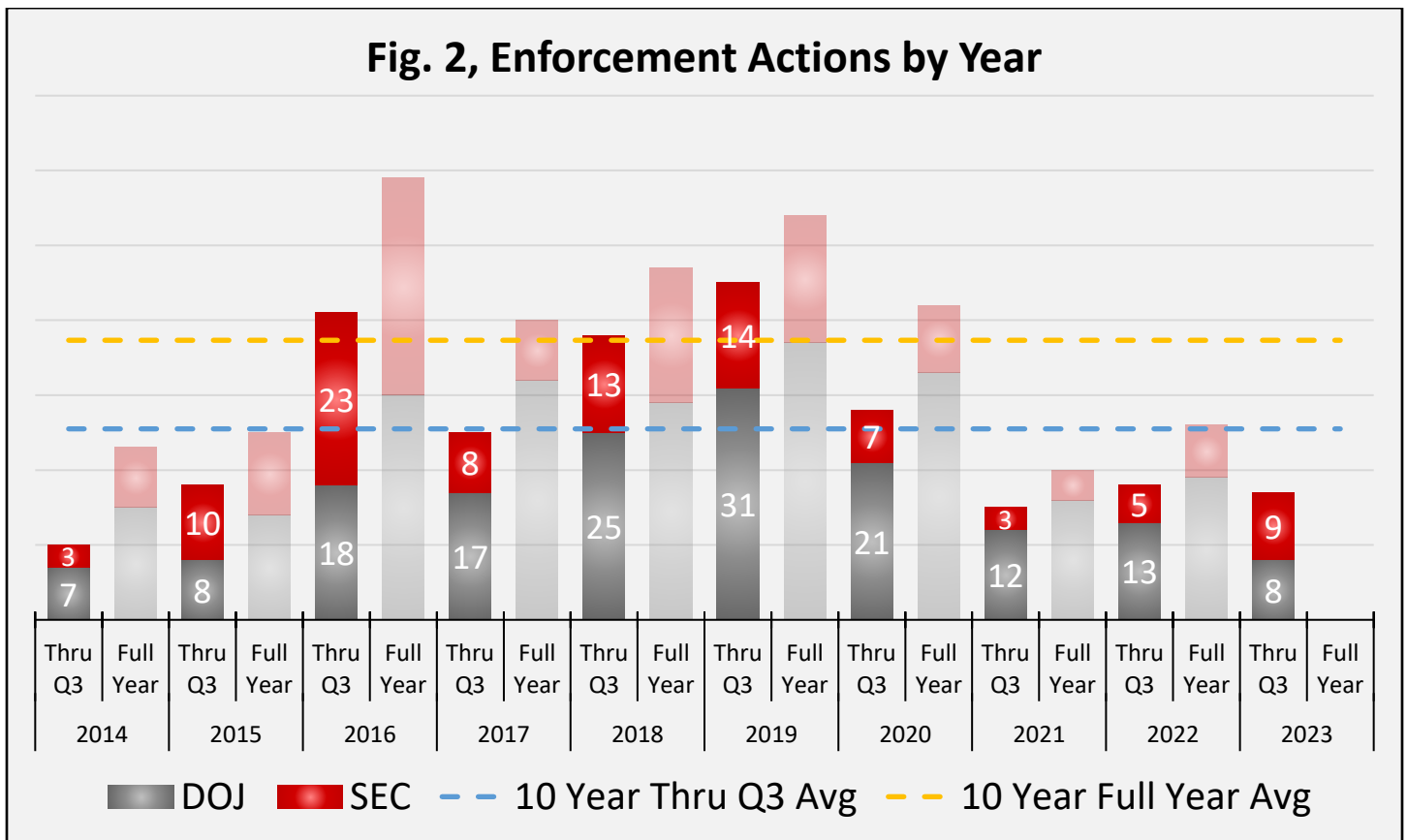
The DOJ added Gary Oztemel to a [previously filed enforcement action](#) against his brother Glenn and fellow oil and gas trader, Eduardo Innecco, for their alleged role in connection with Vitol Inc.’s bribery scheme involving Brazil’s state-owned oil company, [Petroleo Brasileiro S.A. - Petrobras](#).

In [U.S. v. Orlando Alfonso Contreras Saab](#), the DOJ filed charges against Saab, a Venezuelan citizen, for his alleged role in a scheme to bribe Venezuelan officials to obtain multi-million dollar contracts with the Venezuelan government for the production, importation, and distribution of food and medicine to the people of Venezuela under the government's Comite Local de Abastecimiento y Produccion program. Saab is the latest defendant charged in a wide-ranging investigation by the DOJ into corruption in Venezuela, which has already ensnared dozens of individual defendants.

In an [administrative proceeding](#) filed against [Clear Channel Outdoor Holdings, Inc.](#), the SEC alleged that one of Clear Channel’s subsidiaries provided travel, entertainment, and expensive gifts to Chinese officials to obtain concessions and advertising contracts from local Chinese transport authorities.

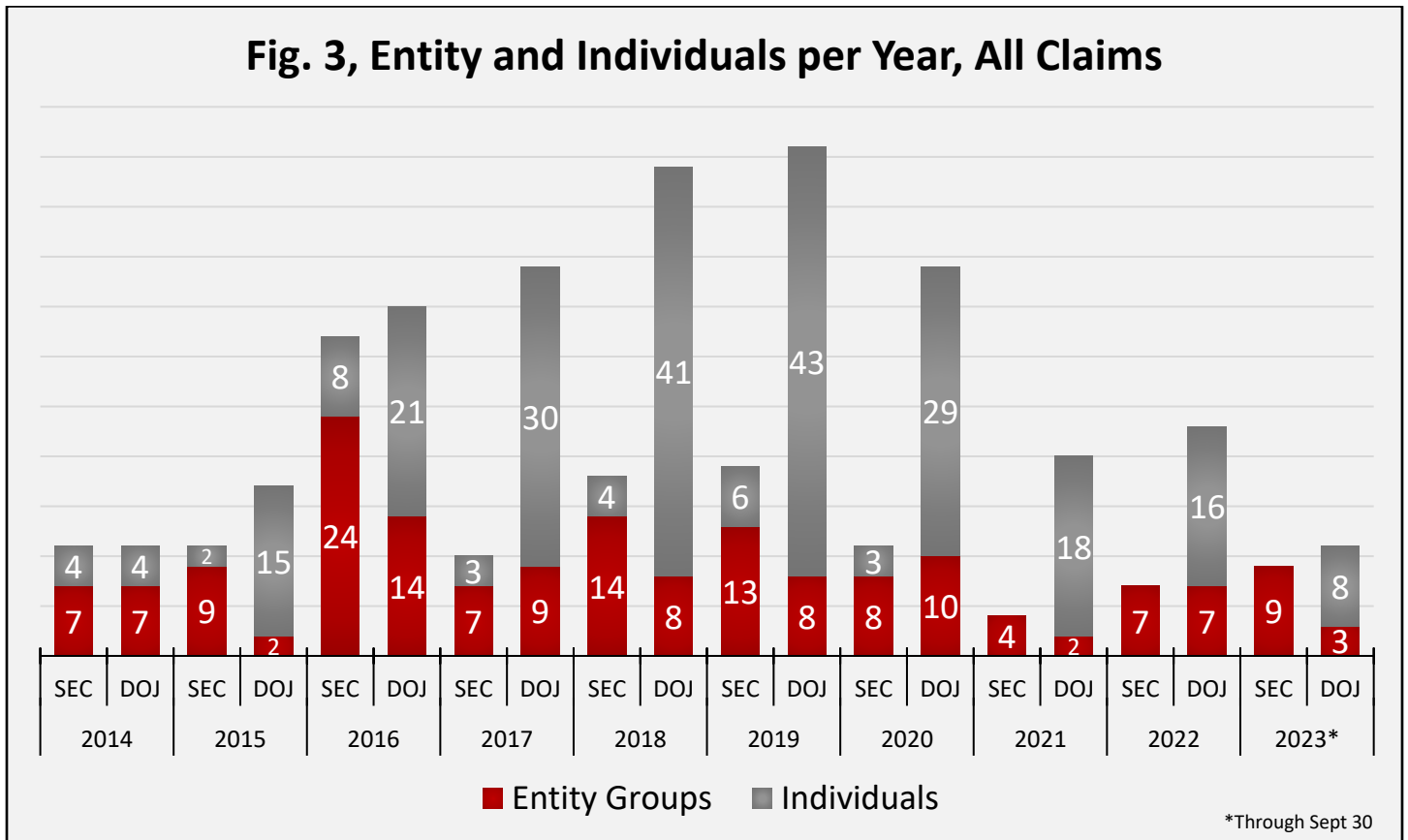
The DOJ and SEC entered into [separate settlements](#) with [Albemarle Corporation](#) for its role in bribery schemes to sell refinery catalyst chemicals to public-sector refineries in India, Indonesia, and Vietnam. In addition to the schemes in those countries, the SEC also charged Albemarle with violating the FCPA’s accounting provisions in connection with alleged misconduct in China and the United Arab Emirates.

Enforcement activity through Q3 of this year remained well below the ten-year average, but roughly in line with the prior two years. Figure 2 compares the level of enforcement activity in the first three quarters of the year with annual totals in each of the last ten years.



The number of individual defendants the SEC and DOJ have charged with FCPA-related violations has declined steadily since 2019. In fact, the SEC has not initiated an FCPA-related action against an individual since 2020. Figure 3 compares the number of individual and corporate defendants charged in each of the last ten years.

Some actions initiated against individuals in Q3 2023 may have been filed under seal, so enforcement statistics could change in the coming months as complaints and indictments are unsealed by the courts.



### Investigation Statistics

U.S. authorities are currently investigating at least 35 different entity groups for possible FCPA violations. One company disclosed a new government [Investigation](#) in Q3 ([Inotiv, Inc.](#)). According to Inotiv, the SEC requested information from the company related to whether the importation of “non-human primates from Asia” complied with the FCPA. Figure 4 shows all entity groups that disclosed new FCPA investigations between July and September 2023.

### Fig. 4, New FCPA-Related Investigations Disclosed in Q2 2023

Company	Agencies Involved	Date Investigation Disclosed	Internal Investigation Disclosed?	Country/Region Investigated
<a href="#">Inotiv, Inc.</a>	SEC	Aug. 11, 2023	No	Asia

According to information disclosed in SEC filings and charging and settlement documents, the SEC concluded two publicly-disclosed investigations in the third quarter, and the DOJ concluded one. Both agencies brought an enforcement action against [Grupo Aval Acciones y Valores S.A.](#) or its subsidiaries, and the SEC additionally brought an enforcement action against [3M Company](#).

## **New Opinion Procedure Release**

The DOJ announced its first Opinion Procedure Release for 2023 ([23-1](#)) on August 14 in response to a request from a U.S.-based child welfare agency. The child welfare agency wanted to know its exposure to possible FCPA enforcement if it were to pay for two government officials to travel to the United States for a five-day trip for the purpose of completing post-adoption supervision, which would include meeting with families and their adopted children, and meeting with the child welfare agency's leadership at its offices to learn more about its processes and regulations.

In its analysis, the DOJ stated that the intended trip did not appear to demonstrate the requisite corrupt intent to wrongfully influence government officials. The DOJ further noted that anticipated expenses appeared to be "reasonable and bona fide expenditure[s], such as travel and lodging expenses, incurred by or on behalf of a foreign official . . . directly related to . . . the promotion, demonstration, or explanation of products or services," and thus would fall within an affirmative defense to FCPA liability. Consistent with two earlier Opinion Procedure Releases that addressed similar questions by adoption agencies ([11-01](#) and [12-02](#)), the Department concluded that it would not take any enforcement action under the anti-bribery provisions of the FCPA.

## **Looking Ahead**

At least two companies with ongoing investigations have disclosed accruals in anticipation of settling an FCPA-related investigation. On July 25, [SAP SE](#) disclosed it had accrued €170 million for a possible settlement of investigations into alleged misconduct in South Africa, Brazil, and Indonesia. Additionally, Clear Channel Outdoor Holdings disclosed last year that it had begun settlement negotiations to conclude SEC and DOJ investigations into possible misconduct in China and Italy. As noted above, the SEC concluded its investigation into Clear Channel by filing an administrative proceeding in September, but the [DOJ investigation](#) appears to be ongoing.