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E-ALERT | Global Anti-Corruption

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SIGNIFICANT DEVELOPMENTS AND TRENDS IN ANTI-CORRUPTION ENFORCEMENT

This year-in-review note discusses significant developments and trends in anti-corruption enforcement during 2010.

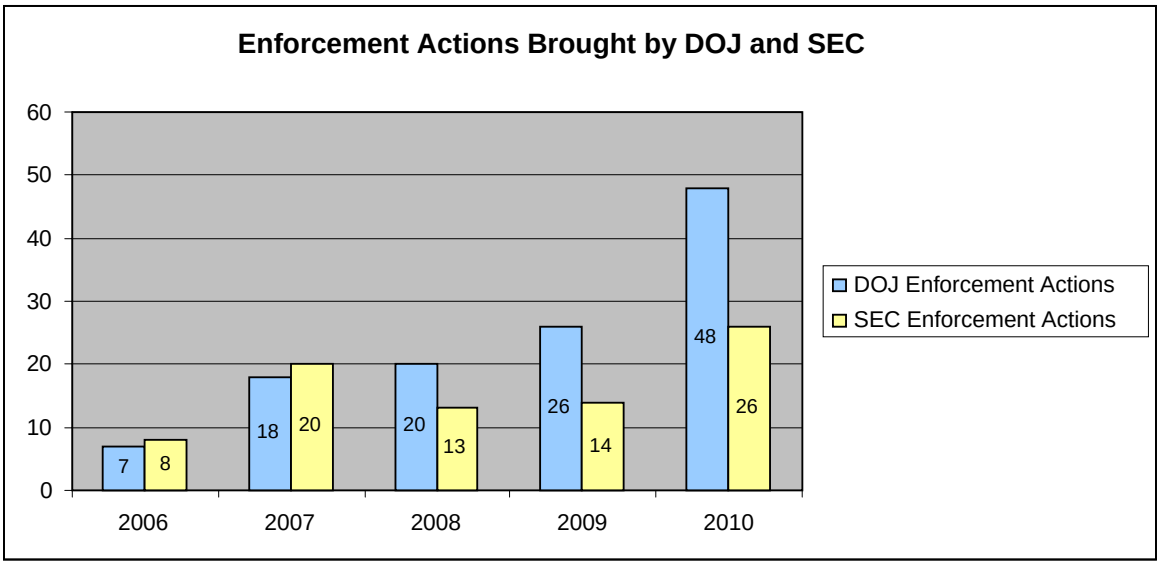
US federal enforcement agencies have continued their aggressive, innovative and coordinated enforcement of the Foreign Corrupt Practices Act ("FCPA") during 2010. These trends are likely to accelerate during 2011 because of the creation in 2010 of a whistleblower bounty program that provides awards to those who report potential violations of US securities laws, including the FCPA, to the US Securities and Exchange Commission ("SEC"). The new UK Bribery Act, which was enacted in April 2010 and is scheduled to enter into force in April 2011, adds a set of compliance requirements roughly parallel to those of the FCPA that affect multinationals doing business in the UK, including prohibitions on both public- and private-sector bribery.

US AUTHORITIES CONTINUED THEIR AGGRESSIVE, INNOVATIVE AND COORDINATED FCPA ENFORCEMENT

Enforcement trends that developed in the US over the past several years have continued -- and in many cases accelerated -- during 2010. That seems likely to continue in 2011.

Aggressive Enforcement

2010 marked the most active year to date for FCPA enforcement, whether measured by the number of cases or the value of monetary penalties that were imposed. In 2010, the Department of Justice ("DOJ") brought 48 enforcement actions and the SEC brought 26 actions. US government recoveries in 2010 relating to the FCPA totaled more than $1.8 billion.

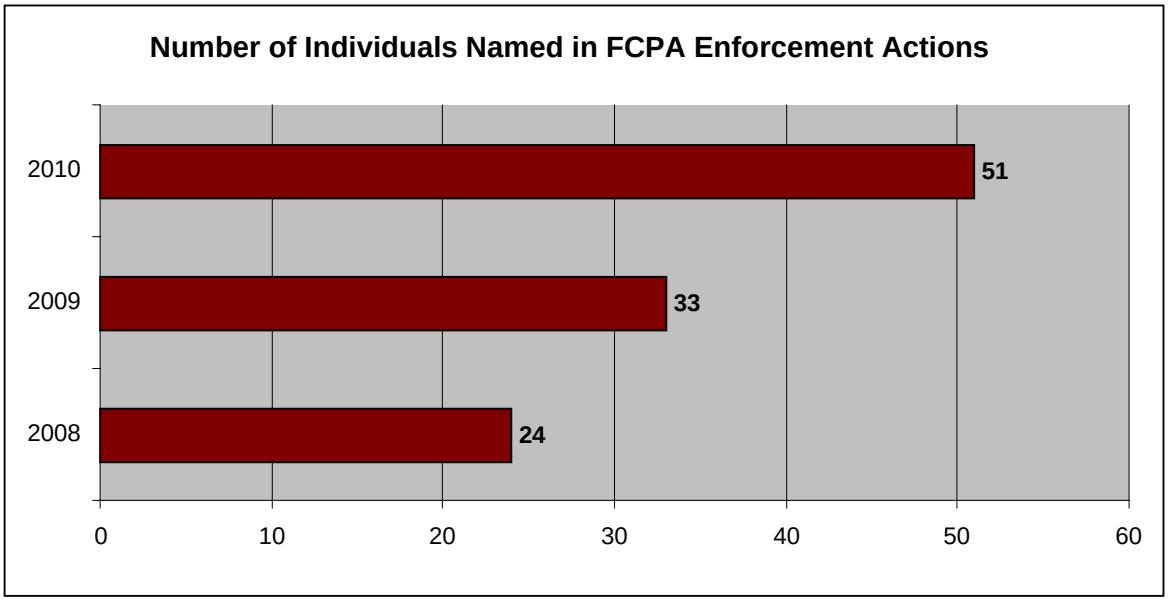


The volume of fines, both in individual cases and in the aggregate, also increased in 2010. Eight of the top 10 largest fines were assessed in 2010, and all 10 came within the past 24 months.

Company Name	Total US Government Recovery	Location of Headquarters	Year of Settlement
Siemens	$800 million	Germany	2008
KBR/Halliburton	$579 million	US	2009
BAE Systems	$400 million	UK	2010
ENI/Snamprogetti	$365 million	Italy/Netherlands	2010
Technip	$338 million	France	2010
Daimler	$185 million	Germany	2010
Alcatel-Lucent	$137 million	France	2010
Panalpina	$82 million	Switzerland	2010
ABB	$58 million	Switzerland	2010
Pride	$56 million	US	2010

It is interesting to note that nearly all of the misconduct giving rise to settlements listed above occurred in the late 1990s and early 2000s. The "age" of the conduct thus raises the question of whether, once the current pipeline of cases has run its course, the size of recoveries will decline. We may well see this dynamic in the future, particularly given the increasing industry focus on compliance.

The DOJ has continued its explicit policy of looking beyond corporate defendants and prosecuting individuals for their involvement in FCPA violations. In 2010, 51 individuals were subjects of enforcement actions, compared with 33 in 2009 and 24 in 2008.



Innovative Enforcement

During 2010, the DOJ and SEC continued to rely upon innovative enforcement theories and used investigatory techniques more traditionally used in other criminal enforcement contexts.

In November 2010, the DOJ and SEC announced FCPA settlements with Panalpina, a Swiss freight forwarder, and six of its customers. The SEC historically has targeted only US "issuers" -- companies that are required to file certain reports with the SEC. In this case, however, the SEC alleged that Panalpina, a non-issuer, was acting as an "agent" of its issuer customers and had aided and abetted their FCPA violations.

The enforcement action against Panalpina represents the first time that the SEC has targeted a non-issuer based on an agency theory. The agency theory upon which the SEC relied in Panalpina greatly expands the range of entities subject to the FCPA's already broad jurisdiction. The DOJ also relied during the past year upon aggressive "agency" theories in related prosecutions of Shell and two of its subsidiaries.

Additionally, US enforcement authorities have shown an increasing willingness and ability to use enforcement techniques typically found in other criminal contexts. After a sting operation involving wiretaps and undercover agents, US authorities arrested 22 individuals during a defense products show in Las Vegas in January 2010. Prosecutions are ongoing.

Coordinated Enforcement

US enforcement authorities have increased their coordination with non-US enforcement authorities and have shown a willingness to target non-US as well as US companies.

The DOJ has continued to hire new FCPA-focused prosecutors in the Fraud Section of the Criminal Division, while the SEC has established a dedicated FCPA enforcement unit and set up a San Francisco general enforcement unit to coordinate enforcement against West Coast companies and in Asia. The FBI also has added FCPA-specific agents.

Similarly, the DOJ and SEC increasingly have coordinated with non-US government officials in the anti-corruption arena and have publicly acknowledged receiving assistance from officials of Costa Rica, France, Haiti, Italy, Switzerland, the United Kingdom and the United Nations. The DOJ and SEC also have not hesitated to target non-US companies: eight of the 10 largest FCPA settlements have involved companies headquartered outside the US.

NEW WHISTLEBLOWER BOUNTY PROGRAM MAY LEAD TO ADDITIONAL INVESTIGATIONS AND ENFORCEMENT ACTIONS

A new program providing for significant awards to whistleblowers who report FCPA violations to the SEC could lead to additional US government investigations and enforcement actions against companies that violate the FCPA.

As part of the Dodd-Frank Act, the US Congress enacted in July 2010 new whistleblower bounty provisions that require the SEC to pay awards to individuals who "voluntarily" provide "original information" about a potential violation of the US securities laws (which include the FCPA) that leads to a successful SEC enforcement action resulting in monetary sanctions exceeding US $1 million. Subject to various conditions, the SEC must provide cash bounties to whistleblowers of 10 to 30

percent (determined at the SEC's discretion) of monetary recoveries in the SEC action and any "related action" (e.g., a prosecution brought by the DOJ).

In 2011, the SEC will finalize implementing rules for the whistleblower bounty program, which will provide guidance on how the program will be administered. Covington & Burling LLP has submitted comments to the SEC on behalf of a number of companies regarding the SEC's draft implementing rules, and we are tracking developments in this area closely.

Depending on how the whistleblower rules are crafted and implemented, the whistleblower program could increase the risk of employees, vendors, and others blowing the whistle on FCPA violations to the SEC; may undermine the effectiveness of internal compliance reporting mechanisms by encouraging whistleblowers to take their concerns to the SEC in the first instance; and in some cases will alter the analysis when companies are deciding whether to disclose FCPA violations. It is too early, however, to assess the extent to which this new provision will have any of these effects.

ENACTMENT OF UK BRIBERY ACT ADDS NEW COMPLIANCE REQUIREMENTS

The entry into force in the United Kingdom of the Bribery Act 2010 ("UK Bribery Act") provides a new set of requirements that are parallel but not identical to the FCPA for multinational companies doing business in the UK.

Enacted in April 2010, the UK Bribery Act represents the most significant reformulation of the UK's anti-bribery laws in over 100 years. Importantly, the UK Bribery Act applies to both public- and private-sector bribery, whether committed in the UK or abroad. Unlike the FCPA, the UK Bribery Act prohibits "facilitating payments" -- small payments to obtain non-discretionary government action.

The UK Bribery Act makes UK companies as well as other companies that carry on all or part of their business in the UK liable for bribes paid on their behalf -- including bribes by business partners, subsidiaries and agents -- unless they are able to demonstrate that they have developed and implemented "adequate procedures" to prevent bribery.

Companies that do business in the UK with existing FCPA-focused anti-corruption programs should move promptly to consider whether those programs should be modified in light of the new UK bribery regime. Recent increases in UK enforcement activity likely will continue once the UK Bribery Act comes into force in April 2011. The UK Serious Fraud Office ("SFO") will enforce the UK Bribery Act.

Covington & Burling's London office is actively advising companies on the scope and impact of the UK Bribery Act.

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Covington & Burling's Global Anti-Corruption Practice

With anti-corruption specialists in our Washington, New York, London and Beijing offices, Covington's Global Anti-Corruption team truly has global reach. Our team includes more than fifteen experienced lawyers, including partners and of counsel. Our lawyers have held senior positions in the US Department of Justice, US Attorney's Offices, US Solicitor General's Office, White House, Securities and Exchange Commission, UK Serious Fraud Office and other government agencies involved in anti-corruption issues and thus understand the approach of the US and UK governments in this area. Associates on the team also have been deeply involved in all facets of our anti-corruption practice, assisting in investigations and devising compliance programs for our clients.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our global anti-corruption practice group:

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