

Client Alert.

January 12, 2011

2010: Another Record-Breaking Year for FCPA Enforcement, Confirming "New Era"

By Paul T. Friedman, Ruti Smithline, and Angela E. Kleine

Since 2007, regulators and commentators alike have touted each passing year as a record-breaking year for FCPA enforcement. 2010 was no exception. Last year saw an explosion in the number of cases brought by the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). The last 12 months also brought the imposition of record-breaking corporate fines and prison terms for individual defendants.

In November of last year, Assistant Attorney General Lanny Breuer, Criminal Division, DOJ, announced that "[W]e are in a new era of FCPA enforcement."¹ A look back at 2010 confirms Mr. Breuer's statement—in the history of FCPA enforcement, there has never been a year quite like 2010.

THE NUMBERS

The number of FCPA enforcement actions increased by 85% from 2009 to 2010. Last year, the DOJ brought 48 criminal cases. The SEC filed 26 new actions. To put these numbers in context, in 2007—commonly anointed the first record-breaking year of FCPA enforcement—the DOJ brought 18 cases and the SEC filed 20 cases. Although these numbers have been steadily increasing from year to year, 2010 overshadowed any prior year in sheer numbers of enforcement actions.

The monetary penalties assessed against corporations in 2010 were also astounding in their magnitude. In total, companies paid a record \$1.8 billion in financial penalties to the DOJ and SEC in 2010. Even in 2008, when Siemens paid \$800 million (which remains the largest single fine ever paid), the DOJ and SEC collected \$890 million in total for that year. Of the top 10 biggest FCPA settlements of all time, eight of them were reached in 2010.² These include:

| COMPANY | SETTLEMENT AMOUNT (in millions) |
|-------------------------|------------------------------------|
| BAE Systems | \$400 |
| ENI/Snamprogetti | \$365 |
| Technip | \$338 |
| Daimler | \$185 |
| Alcatel-Lucent | \$137 |

¹ Please see our Client Alert from November 19, 2010, <http://www.mofo.com/files/Uploads/Images/101118-FCPA-Enforcement.pdf>. A transcript of the speech is available at <http://www.justice.gov/criminal/pr/speeches/2010/crm-speech-101116.html>.

² See "Recent Cases, Foreign Companies Dominate New Top Ten," FCPA Blog (Jan. 5, 2010), <http://www.fcpcblog.com/blog/2011/1/5/recent-cases-foreign-companies-dominate-new-top-ten.html>.

Client Alert.

And 2010 also brought the longest FCPA prison sentence ever handed down: seven years and three months.³ There were a few relatively short sentences, such as the six months that Gerald and Patricia Green received for allegedly paying bribes to Thai government officials in order to win film festival contracts. But, overall, 2010 saw prosecutors aggressively going after individuals, and individuals receiving hefty prison sentences. For example, two of the defendants involved in the Haiti Telecom investigation received sentences of 48 months and 57 months.⁴

A YEAR OF FIRSTS

2010 was also remarkable as a year of firsts in terms of creative and aggressive enforcement, both by U.S. regulators and the international anti-corruption community. To list just a few examples, 2010 was the first year that:

- The SEC charged a company that is not a U.S. issuer with FCPA violations.⁵
- The DOJ successfully used money-laundering conspiracy charges to reach the conduct of foreign government officials *accepting* bribes.⁶
- U.S. and UK law enforcement cooperated in a massive corruption undercover sting operation.⁷
- U.S. Congress enacted a new law providing a bounty program for FCPA whistleblowers.⁸
- The UK passed the UK Bribery Act 2010 criminalizing a company's failure to prevent bribery and commercial bribery between private parties.⁹

CONCLUSION

2010 was unquestionably a watershed year for FCPA enforcement. Regulators ushered in a "new era" of enforcement through aggressive and expansive prosecutions. Regulators are promising the "era" to continue in 2011, and beyond. If so, 2011 may produce yet another record-breaking year.

Contact

Morrison & Foerster's FCPA and Anti-Corruption Task Force:

Paul T. Friedman
San Francisco
(415) 268-7444
pfriedman@mofo.com

Carl H. Loewenson, Jr.
New York
(212) 468-8128
cloewenson@mofo.com

Randall J. Fons
Denver
(303) 592-2257
rfons@mofo.com

Robert A. Salerno
Washington, D.C.
(202) 887-6930
rsalerno@mofo.com

Daniel P. Levison
Tokyo
+ 81 3 3214 6717
dlevison@mofo.com

Sherry Yin
Beijing
+ 86 10 5909 3566
syin@mofo.com

Kevin Roberts
London
+ 020 7920 4160
kroberts@mofo.com

³ DOJ Press Release No. 10-422 (Apr. 19, 2010), <http://www.justice.gov/opa/pr/2010/April/10-crm-442.html>.

⁴ DOJ Press Release No. 10-639 (June 2, 2010), <http://www.justice.gov/opa/pr/2010/June/10-crm-639.html>; DOJ Press Release No. 10-883 (July 30, 2010), <http://www.justice.gov/opa/pr/2010/July/10-crm-883.html>.

⁵ Complaint, *SEC v. Panalapina, Inc.* (S.D. Tex. Nov. 4, 2010), <http://www.sec.gov/litigation/complaints/2010/comp21727.pdf>.

⁶ DOJ Press Release No. 10-639 (June 2, 2010), <http://www.justice.gov/opa/pr/2010/June/10-crm-639.html>.

⁷ DOJ Press Release No. 10-048 (Jan. 19, 2010), <http://www.justice.gov/opa/pr/2010/January/10-crm-048.html>.

⁸ Please see our Client Alert from November 4, 2010, <http://www.mofo.com/files/Uploads/Images/101104-Dodd-Frank-Whistleblower.pdf>.

⁹ Please see our Client Alert from September 30, 2010, <http://www.mofo.com/files/Uploads/Images/100930-UK-Bribery-Act-2010.pdf>.

Client Alert.

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for seven straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.