

Client Alert

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Top Ten International Anti-Corruption Developments for January 2015

By the MoFo FCPA and Global Anti-Corruption Team

This installment of MoFo's Top Ten International Anti-Corruption Developments highlights important Department of Justice (DOJ) personnel changes, an increase in government resources being dedicated to FCPA enforcement efforts, new enforcement efforts, and developments in ongoing cases that have dominated the headlines in 2014. We summarize below some of the most important international anti-corruption developments in the past month with links to primary resources, as an overview for busy in-house counsel and compliance professionals. Here is our January 2015 Top Ten list:

1. 2015 Brings Personnel Changes in Key DOJ Positions:

- **Andrew Weissmann to lead DOJ Fraud Section.** It was announced in early January that Andrew Weissmann, who most recently served on the faculty of NYU School of Law, is returning to government service. He previously held numerous government positions, including serving as the FBI's general counsel under former Director Robert S. Mueller, as deputy director and then director of the Enron Task Force from 2002 through 2005, and as an Assistant U.S. Attorney in the Eastern District of New York for 15 years, where he was the Chief of the U.S. Attorney's Office's Criminal Division. As head of the Enron Task Force, Weissmann oversaw the investigations and prosecutions of more than 30 individuals, including Jeffrey Skilling, Kenneth Lay, and Andrew Fastow. He is a recipient of the Attorney General's Award for Exceptional Service in 2006 and Director's Awards for Superior Performance in 1994, 1996, 1999, and 2000. Interestingly, while in private practice, Weissmann worked for the U.S. Chamber of Commerce, authoring an amicus [brief](#)¹ and an [article](#)² challenging the current corporate criminal liability standard in the United States and [advocating](#) for changes to the Foreign Corrupt Practices Act (FCPA) in *Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act*.³ Weissmann's approach to these issues in practice remains to be seen, though our impression is that, given his reputation as a zealous advocate on behalf of his clients (both in the private and

¹ Brief for the Association of Corporate Counsel, *United States v. Ionia*, No. 07-5801-CR (2d Cir. 2008) available at <https://www.nacdl.org/WorkArea/DownloadAsset.aspx?id=21983&libID=21953>.

² A. Weissmann, R. Ziegler, L. McLoughlin & J. McFadden, "Reforming Corporate Criminal Liability to Promote Responsible Corporate Behavior" U.S. Chamber Institute for Legal Reform (Oct. 2008) available at <http://www.instituteforlegalreform.com/uploads/sites/1/WeissmannPaper.pdf>.

³ A. Weissmann and A. Smith, "Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act," U.S. Chamber Institute for Legal Reform (Oct. 2010) available at http://www.instituteforlegalreform.com/uploads/sites/1/restoringbalance_fcpa.pdf.

Client Alert

public sector), we believe his approach to corporate criminal enforcement will be more aligned with his Enron Task Force days when his client was the United States (as it will be now) and less aligned with his U.S. Chamber days. In the meantime, he joins an increasingly large group of former Brooklyn prosecutors at the Criminal Division, including new Assistant Attorney General Leslie Caldwell and her deputies Marshall Miller and Sung-Hee Suh, who will surely leave their mark on the Criminal Division and its many sections, including the Fraud Section. And of course, the likely new Attorney General, Loretta E. Lynch, is currently the U.S. Attorney for the Eastern District of New York, a position she has held since 2010, and previously held from 1999 – 2001.

- **Three New FCPA Assistant Chiefs Appointed.** DOJ named three new Assistant Chiefs in the FCPA Unit of the Fraud Section at the end of December in the wake of Jason Jones departing for private practice in January. Those who follow this space closely will know that the FCPA Unit's Assistant Chiefs handle their own portfolio of cases and play an important role in managing cases, overseeing investigations, recommending declinations, and resolving negotiations. In 2008, the FCPA Unit went from one deputy chief and one assistant chief to a deputy chief and two assistant chiefs. Now, in 2015, the FCPA Unit has veteran prosecutor Patrick Stokes as the deputy chief and five assistant chiefs, including Daniel Kahn, Matthew Queler, and these three newly appointed assistant chiefs:
 - **Tarek Helou** joined the FCPA unit in 2012 as a Trial Attorney after serving as an Assistant U.S. Attorney in the Northern District of California for nearly five years. Helou has been involved in the prosecution, among others, of Frederic Cilins for obstruction, arising from an investigation into corruption related to securing an iron ore concession in Guinea, and Joseph Sigelman and other former PetroTiger executives, arising from bribery allegations in Colombia. Helou was previously a litigation associate for nearly six years in San Francisco. He received his law degree from New York University School of Law.
 - **Laura Perkins** is a Fraud Section veteran joining in 2006. Perkins rose through the ranks to become a Senior Trial Attorney in the Fraud Section before her recent appointment to Assistant Chief. Perkins just recently completed a stint in the Criminal Division's Front Office working with AAG Caldwell and her team, a coveted policy job often associated with later promotions, such as happened in this case. Perkins has prosecuted numerous FCPA cases, including Avon, Paul Novak (the former Willbros consultant), Bilfinger, and Armor Holdings. Perkins' series of promotions in the wake of the ill-fated Africa Sting case reflects the respect that she enjoys within the Fraud Section and the Criminal Division more broadly. Perkins was previously a litigation associate for six years in D.C. She received her law degree from the University of Virginia School of Law.
 - **Leo Tsao** first joined the Fraud Section in 2013 to join the BP Deepwater Horizon Task Force, eventually becoming one of the lead prosecutors of Kurt Mix, a former engineer for

Client Alert

BP, whose December 2013 conviction for destroying evidence was overturned in June 2014 for alleged juror misconduct. That decision is now on appeal before the Fifth Circuit. Tsao is leading the prosecution of Dimitrij Harder, former owner of the Chestnut Group, for FCPA violations (see item number three below), among other cases. Tsao was previously a litigation associate and of counsel in private practice for a number of years before joining DOJ. He received his law degree from Cornell University Law School.

2. **FBI Triples the Number of Agents Devoted to FCPA Enforcement.** The *Wall Street Journal* reported this month that the FBI will be increasing the number of agents tasked with FCPA enforcement from 10 to 30. In addition to focusing their efforts on executives who bribe foreign officials, the agents will also help other nations recoup funds paid to corrupt officials. FBI assistant director Joseph Campbell noted that “the growing global economy and the growing nature of international commerce with globalization of more companies and economies” creates more opportunities for FCPA violations and global corruption. The agents will work out of field offices in New York, Washington, D.C., San Francisco, Los Angeles, Miami, and Boston and will be supported by forensic analysts and other specialists located in Washington, D.C. DOJ expects that these additional resources will allow it to proactively investigate more companies, rather than primarily waiting for the companies to report violations.
3. **DOJ and SEC Anti-Corruption Enforcement Starts 2015 Off with a Bang:**
 - **Former Consulting Firm President Charged with FCPA and Travel Act Violations.** On January 6, 2015, DOJ announced the first FCPA indictment of 2015. Dimitrij Harder, former owner and President of the Chestnut Group, was indicted for violating the FCPA and Travel Act by bribing senior officials at the European Bank for Reconstruction and Development to secure millions of dollars of business in development projects in Eastern Europe. The Chestnut Group’s clients allegedly secured over \$200 million in loans and investments, while Chestnut allegedly earned \$8 million in success fees. Harder is alleged to have paid the sister of a Bank official five payments totaling \$3.5 million for consulting work that was never performed and to have created fraudulent documents to justify the payments. Our prior client alert with more details is available here.
 - **PBSJ Enters DPA with SEC; One Executive Charged.** On January 22, 2015, the SEC announced that Tampa, Florida-based engineering and construction firm, PBSJ Corporation, agreed to pay \$3.4 million to resolve FCPA violations related to alleged bribes paid to Qatari government officials to win government contracts. PBSJ entered into a DPA for two years, agreed to disgorge \$2.8 million, and paid a penalty of \$375,000. The SEC also entered an administrative order against PBSJ’s former international marketing director, Walid Hatoum, who agreed to pay a penalty of \$50,000. PBSJ was charged with allegedly authorizing almost \$1.4 million in bribes disguised as ‘agency fees’ to a foreign official who used an alias to communicate confidential information to PBSJ. The official gave Hatoum and one of PBSJ’s subsidiaries access to confidential bid and pricing information, which ultimately helped PBSJ win 2009 bids for

Client Alert

a hotel resort development in Morocco and a light rail transit project in Qatar. SEC alleged that PBSJ had ignored multiple red flags that should have enabled the company and its officers to discover the bribery sooner. In announcing the settlements, the SEC noted that, once the bribery was discovered, PBSJ self-reported to the SEC and DOJ and provided substantial cooperation, including taking steps to quickly end the misconduct after it was discovered, voluntarily making witnesses available for interviews and providing factual chronologies, timelines, internal summaries, and full forensic images to the SEC during its investigation. No DOJ enforcement action was announced, suggesting that DOJ declined to bring an enforcement action. This was only the third DPA ever entered into by the SEC, the other two matters being Tenaris in 2011 and Ralph Lauren in 2013.

- **BNY Mellon Faces Potential FCPA Charges over Internships.** On January 23, 2015, Bank of New York Mellon stated in an SEC filing that the SEC had preliminarily decided to recommend FCPA charges against the bank for providing internships to family members of sovereign wealth fund managers. BNY Mellon employees and the company itself received Wells notices in late 2014. According to media reports, the SEC has been conducting an industry-wide probe of the hiring practices of certain banks since at least 2014. Given the developments in the Cobalt matter discussed below, it will be instructive to see what happens in the wake of this Wells notice being issued.
- **SEC Closes Four-Year Investigation of Cobalt with No Charges.** On January 28, 2015, Cobalt International Energy, Inc. announced that it had received a termination letter from the SEC advising Cobalt that the Commission did not intend to recommend an enforcement action in connection with the alleged bribery of Angolan government officials. Cobalt had previously announced in August 2014 that the SEC had issued a Wells Notice to Cobalt. The allegations involved a connection between senior Angolan government officials and Nazaki Oil and Gaz, S.A., an Angolan company that, until 2014, held a working interest alongside Cobalt in two oil blocks off the Angolan coast. Cobalt became aware of the bribery allegations in the fall of 2010. When the SEC began an informal investigation of the allegations, Cobalt alerted DOJ as well. DOJ is continuing its investigation of the company. One takeaway from this development is that a Wells notice is not, in fact, always a prelude to an SEC enforcement action, and it remains to be seen what will happen in other matters in which the SEC has served a Wells notice on a company.
- **DOJ Seeks Forfeiture of Former Honduran Official's Properties Purchased with Alleged Foreign Bribe.** On January 13, 2015, DOJ announced that it would seek forfeiture of nine properties worth over \$1.5 million from Mario Zelaya and his brother. The funds used to purchase the New Orleans-area properties were allegedly traceable to a \$2 million bribe paid by a Honduran IT company to Zelaya, who led the Honduran Institute of Social Security. The company, COSEM, allegedly funneled the bribes through an affiliate to Zelaya in order to have the Honduran agency prioritize and expedite payments to COSEM. In announcing the complaint, AAG Caldwell stated, "If you hide or invest your stolen money here, we will use all the legal tools

Client Alert

we have to find it and seize it.” She added that DOJ would target corruptly-gained funds “no matter the source of the corruption.”

- 4. Continued Fallout from Petrobras Corruption Case.** The Petrobras case continues to dominate international anti-corruption news. To date, 39 individuals have been indicted in a widespread corruption investigation into ties between Petrobras and Brazilian politicians. Recent developments include:
- On January 14, 2015, Brazil’s Federal Prosecutor’s Office detained former Petrobras director Nestor Cervero after he arrived in Sao Paulo from Great Britain. A former financial director of the company’s fuel distribution subsidiary is the third former Petrobras executive to be detained as part of a probe into allegations of kickbacks, inflated contracts, and bribery. In a statement, the Federal Prosecutor’s Office noted that this former executive was arrested because of his “involvement in new illicit facts related to the crimes of corruption and money laundering.” According to the prosecutor’s office, the former executive tried to transfer 500,000 reais (approximately \$191,000) to his daughter “knowing he would have a 20 percent financial investment loss.” He also transferred three apartments valued at 7 million reais (approximately \$2.7 million) “purchased with funds of suspicious origin” and declared that the apartments were worth 560,000 reais (approximately \$214,000).
 - On December 30, 2014, Petrobras announced it would no longer contract with 23 companies due to corruption issues. The announcement follows a suit brought by U.S. investors against Petrobras and several of its executives that alleges Petrobras made misstatements in describing its assets. Petrobras’s stock fell over 4% on the day the suit was announced.
 - In late December 2014, a former executive of Petroleo Brasileiro SA also met with Brazilian federal prosecutors for five hours and handed over a computer containing documents that allegedly show that the company’s chief executive and board of directors were made aware of an alleged bribery scheme as early as 2009. The executive is the former managing director of Petrobras Singapore Private Ltd., a subsidiary of Petrobras, and she worked directly under another former Petrobras executive, who has himself reportedly admitted as part of a plea that he accepted millions of dollars in bribes from developers. The former managing director also claims to have alerted company officials at the Singapore subsidiary, but the company took no action. She was reportedly fired in November for violating Petrobras’s procurement procedures, according to the company.
- 5. Secret Recordings of Former PetroTiger Co-CEO Can be Used at Trial.** On December 30, 2014, U.S. District Judge Joseph E. Irenas ruled that federal prosecutors can use secret video recordings made by former PetroTiger general counsel Gregory Weisman in the trial of former PetroTiger co-CEO Joseph Sigelman. Sigelman asked that the recordings be suppressed because Weisman acted, at times, as Sigelman’s personal attorney. Judge Irenas ruled that the recorded conversations were not shielded by the attorney-client privilege because Sigelman was not actively seeking legal advice. “I cannot find a shred of indication that Weisman is there with the intention of giving legal advice to Sigelman,” Judge Joseph Irenas said, “or the converse, that Sigelman was seeking legal advice from Weisman.” Weisman

Client Alert

wore a secret camera and made the recordings at the government's direction. Weisman has plead guilty to one count of conspiracy to violate the FCPA and to commit wire fraud, and he and another co-defendant are expected to testify for the government at trial, which remains set for April 20, 2015.

- 6. Indonesian Anti-Corruption Official Arrested for Interfering in Case.** On January 23, 2015, the deputy chief of Indonesia's anti-corruption body, Corruption Eradication Commission (KPK), Bambang Widjojanto, was arrested for allegedly interfering in a legal case by ordering witnesses to give false evidence during a 2010 constitutional court challenge to a local election result. He could face seven years in prison if found guilty of the charges. Widjojanto's arrest sparked protests and criticism that the police are seeking to hinder a government crackdown on corruption in Indonesia and that Widjojanto was arrested out of a sense of vengeance by police. A week before Widjojanto's arrest, KPK accused a high-ranking police general of corruption. Three-star general Budi Gunawan has been nominated to be the country's new police chief, but the corruption allegations have delayed his appointment. Indonesia's president, who campaigned on a promise of zero tolerance for corruption, urged all parties to act objectively.
- 7. Israel Securities Authority Investigates Alleged Siemens Bribery.** Six current and former executives of Israel's state-owned electric company, IEC, were detained on December 29 for their roles in alleged corruption offenses. The Senior Vice President of Engineering Projects was arrested by the Israel Securities Authority and is accused of taking hundreds of thousands of bribes. IEC's former Vice President of Power Generation and Transmission was also detained. Though an Israeli court has ordered a gag order on the details of the case, the accusations are believed to be related to Siemens's 2008 overseas bribery settlements totaling \$1.6 billion in the U.S. and Germany. Siemens Israel's CEO was also arrested last June, cooperated in exchange for immunity, and then was re-indicted based on new evidence.
- 8. Alcoa Settles Derivative Case Based on Corrupt Payments.** On January 20, parties to a shareholder suit filed against Alcoa management in 2012 settled for compliance changes and \$3.75 million in attorneys' fees. Judge Donetta Ambrose of the Western District of Pennsylvania accepted the settlement after there were no objections from Alcoa's shareholders. The case was based on the federal investigation into Alcoa's supply agreements in Bahrain, in which Alcoa paid \$384 million in DOJ and SEC fines.
- 9. DAAG Sung-Hee Suh Speaks at PLI Institute on Securities Regulation in Europe.** On January 20, 2015, DAAG Sung-Hee Suh spoke regarding the Criminal Division's 2015 priorities for white collar criminal enforcement. She noted a broad list of priorities, including "corruption, cybercrime, and financial fraud . . . within or outside U.S. borders." Stressing the importance of corporate cooperation in the Department's charging decisions, Suh noted that "Corporations too often overlook a key consideration that the department has long expressed in our Principles of Federal Prosecution, which guide our prosecutorial decisions: That is a corporation's willingness to cooperate in the investigation of its culpable executives." She then contrasted the PetroTiger case, where the company voluntarily disclosed the conduct, cooperated with DOJ, and was not charged (although three executives were charged) with the

Client Alert

Alstom case, where, after “an extensive multi-tool investigation involving recordings, interviews, subpoenas, MLAT requests, the use of cooperating witnesses, and more,” four executives were charged , three have pled guilty , Alstom’s consortium partner, Marubeni, was charged and pled guilty , and Alstom pled guilty and agreed to pay a record \$772 million fine.

- 10. 2014 Sets DOJ Record for FCPA Fines.** In the wake of significant FCPA matters that were resolved in December 2014, the calculators came out in January 2015 to add up the criminal fines, penalties, and forfeitures. DOJ collected a record \$1.25 billion in fines on seven corporate enforcement actions in 2014, including two cases that collectively accounted for nearly \$1 billion of DOJ’s recoveries. This surpasses the previous high-water mark, \$870 million, collected in 2010 on seventeen corporate enforcement actions. The 2014 enforcement actions include Alstom, Alcoa, Avon, Dallas Airmotive, Bio-Rad, HP-related entities, and Marubeni. In 2011, DOJ collected \$355 million in corporate fines (plus a \$149 million forfeiture against an individual) in eleven enforcement actions; in 2012, DOJ collected \$142 million in nine actions; and, in 2013, DOJ collected \$420 million in seven actions.

For more information, please contact:

Washington, D.C.

Charles E. Duross
cduross@mofo.com

Demme Doufekias
ddoufekias@mofo.com

Hong Kong

Timothy W. Blakely
tblakely@mofo.com

Singapore

Daniel P. Levison
dlevison@mofo.com

San Francisco

Paul T. Friedman
pfriedman@mofo.com

Stacey M. Sprenkel
ssprenkel@mofo.com

Beijing

Sherry Xiaowei Yin
syin@mofo.com

New York

Carl H. Loewenson, Jr.
cloewenson@mofo.com

Ruti Smithline
rsmithline@mofo.com

Tokyo

James E. Hough
jhough@mofo.com

Berlin

Thomas Keul
tkeul@mofo.com

Hanno Timmer
htimmer@mofo.com

London

Kevin Roberts
kroberts@mofo.com

Paul T. Friedman
pfriedman@mofo.com

Client Alert

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