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RISK & COMPLIANCE JOURNAL.

Mid-Year FCPA Enforcement Report

Jul 21, 2017 6:00 am ET

(This is a quarterly analysis of trends in anti-bribery enforcement by The Foreign Corrupt Practices Act Clearinghouse, a database operated by Stanford Law School. The views presented here are those of the author alone, not those of Dow Jones or the Wall Street Journal.)

By KRISTEN SAVELLE

Foreign Corrupt Practices Act enforcement slowed in the first half of 2017, although speculation around the government's shifting enforcement priorities may be premature.

Between Jan. 1 and June 30, 2017, the SEC initiated FCPA enforcement actions against four entity groups and two individuals, while the DOJ initiated FCPA enforcement actions against five entity groups and two individuals and added FCPA claims to an existing action against one individual. Total monetary sanctions imposed to date in these actions exceed \$108 million, and are predicated on alleged total bribery payments of at least \$50 million, although the value of some payments were not disclosed in the resolution documents.

Biomet is counted as one of the DOJ actions, although Biomet initially entered into a deferred prosecution agreement with the DOJ in 2012. Biomet's successor-in-interest, Zimmer Biomet Holdings, was charged again in 2017 along with Biomet's subsidiary, JERDS Luxembourg Holding S.ar.l., due to Biomet's, and subsequently Zimmer Biomet's, failure to adhere to the requirements of the 2012 DPA. The DOJ's prosecution of Francis Lorenzo is also counted as a 2017 enforcement action, although it is not treated as a "new" action for purposes of Figure 3, below. Mr. Lorenzo, the former U.N. Deputy Ambassador for the Dominican Republic, was originally charged with bribery-related offenses in 2015. A superseding information filed on April 27, 2017, added FCPA charges to the ongoing proceeding.

All of the entity groups that assumed an ongoing compliance obligation as part of a 2017 resolution of FCPA claims with the government were also required to retain an independent compliance monitor, which may indicate a continuing trend in favor of independent monitors that started in 2016. The first half of 2017 also saw three successor entities resolve FCPA claims with the government based on the misconduct of a predecessor organization. Finally, most of the FCPA enforcement actions filed in the first six months of the year were predicated on improper payments allegedly made to officials in Latin America or the Asia-Pacific region.

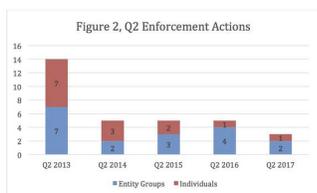
Figure 1 below identifies all enforcement actions initiated by the SEC and DOJ during the first half of 2017 that allege one or more violations of the FCPA. For purposes of these counts, declinations with disgorgement are treated as enforcement actions.

Enforcement activity in 2017 is trending significantly lower than in 2016, when 20 enforcement actions were filed in the first half of the year and 56 enforcement actions were filed by year's end. Even more dramatic is the decline in activity between Q1 and Q2 of 2017. In Q1, the SEC and DOJ initiated 11 new FCPA actions. In Q2, by contrast, the SEC filed no new actions and the DOJ added FCPA charges to an ongoing individual prosecution and entered into declinations with disgorgement with two entity groups.

The low level of enforcement activity in Q2 2017 also stands in contrast to Q2 activity from prior years. The government initiated 14 FCPA enforcement actions in Q2 2013,

Date	Caption	Agency	Successor Liability?	Independent Monitor?	Disposition	Monetary Sanctions	Geographies
1/4/17	United States of America v. Juan Jose Hernandez-Correa	DOJ	N/A	N/A	Plea	50	Venezuela
1/4/17	United States of America v. Charles Quintard Beech III	DOJ	N/A	N/A	Plea	50	Venezuela
3/6/17	In the Matter of Cadbury Limited and Mondelēz International, Inc.	SEC	Yes	N/A	Cease and Desist	\$13,000,000	India
Superseding Information filed 1/12/2017	United States of America v. Bionet, Inc.	DOJ	Yes	Hybrid	DPA	\$23,983,105	Brazil, Mexico
1/12/17	United States of America v. JERDS Luxembourg Holding S.à.r.l.	DOJ	No	N/A	Plea	\$400	Mexico
1/12/17	In the Matter of Bimmet, Inc.	SEC	Yes	No	Cease and Desist	\$13,022,805	Brazil, Mexico
1/13/17	United States of America v. Sociedad Química y Minera de Chile	DOJ	No	Yes	DPA	\$15,487,500	Chile
1/13/17	In the Matter of Sociedad Química y Minera de Chile, S.A.	SEC	No	Yes	Cease and Desist	\$15,000,000	Chile
1/18/17	In the Matter of Orthofix International N.V.	SEC	No	Yes	Cease and Desist	\$6,119,375	Brazil
1/19/17	In Re Las Vegas Sands Corp.	DOJ	No	Hybrid	NPA	\$6,960,000	China
1/26/17	Securities and Exchange Commission v. Michael L. Cohen and Vanya Baros	SEC	N/A	N/A	Ongoing	Ongoing	Chad, Democratic Republic of the Congo, Guinea, Libya, Niger
Superseding Information filed 4/27/2017	U.S. v. Lorenzo	DOJ	N/A	N/A	Ongoing	Ongoing	Dominican Republic, Antigua and Barbuda
6/16/17	In Re: Linde North America Inc. and Linde Gas North America LLC	DOJ	Yes	N/A	Declination with Disgorgement	\$11,235,000	Georgia
6/16/17	In Re: CDM Smith, Inc.	DOJ	No	N/A	Declination with Disgorgement	\$4,037,138	India

PHOTO: FCPA CLEARINGHOUSE



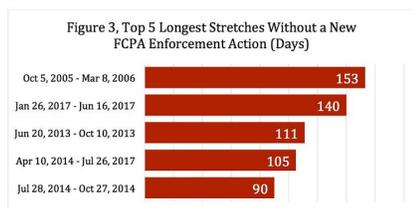
and five enforcement actions in each of Q2 2014, 2015 and 2016. Q2 2017 is also notable for the absence of any new individual actions, although FCPA claims were added to an existing individual prosecution.

Figure 2 below depicts FCPA enforcement activity during Q2 for each of the past five calendar years.

Dwindling FCPA enforcement activity has, to some extent, reinforced concerns about shifting enforcement priorities under the Trump Administration. Since President Trump’s inauguration on Jan. 20, 2017, the SEC and DOJ collectively have initiated only four new enforcement actions: the Linde and CDM Smith declinations with disgorgement, and two SEC actions filed against Michael Cohen and Vanya Baros in connection with the Och-Ziff bribery scandal. Moreover, the Cohen and Baros actions, which were filed on Jan. 26, 2017, were followed by a 140-day gap in new FCPA enforcement activity. This is

the second longest gap in the modern post-2005 era of FCPA enforcement. Further, the only new criminal prosecutions initiated during President Trump’s tenure involve two declinations with disgorgement, which are never filed in court, include few facts, and lack the force and consequences of a criminal conviction.

While these numbers may fuel speculation around the Trump Administration’s continued interest in aggressive FCPA enforcement, there are several factors that counsel against a rush to judgment. First, gaps in enforcement activity are not uncommon, and the recent 140-day lull between new enforcement actions is not even the longest on record. Figure 3 depicts the five longest periods of FCPA inactivity since 2005, which is the year that U.S. authorities started to aggressively enforce the FCPA.



The longest stretch of 153 days occurred between October 2005 and March 2006. However, if the two recent declinations with disgorgement are not counted as enforcement actions, then the current gap in enforcement activity would move to the top spot.

Second, a lull in new filings or settlements does not mean

that all FCPA-related enforcement activity has come to a halt. In fact, much of the activity may be continuing behind the scenes. Around 70 companies have disclosed an ongoing FCPA-related investigation by U.S. authorities into potential FCPA violations, and at least two of those investigations appear to have been initiated in or around the second quarter of 2017. An additional 19 companies have disclosed ongoing internal investigations into potential FCPA violations.

Third, both the SEC and the DOJ are in a period of transition, with top leadership stepping down at both agencies, and many key roles remaining vacant for much of the first half of 2017. While Jay Clayton was confirmed as the new head of the SEC in May, two of the five Commission seats are currently unfilled. Similarly, as of June 2017, President Trump had not replaced any of the holdover U.S. attorneys that were asked to resign at the start of the new administration. The slow pace of new enforcement activity may be a symptom of these transitions and vacancies.

Finally, both Attorney General Jeff Sessions and Trevor McFadden, the Criminal Division's acting principal deputy assistant attorney general, have confirmed the government's commitment to continued enforcement of the FCPA. Speaking at the Ethics and Compliance Initiative Annual Conference on April 24, 2017, Mr. Sessions confirmed that the Department of Justice "will continue to strongly enforce the FCPA and other anti-corruption laws." Similarly, Mr. McFadden told an audience at the Anti-Corruption, Export Controls & Sanctions Summit that "the department remains committed to enforcing the FCPA and to prosecuting fraud and corruption more generally" and that "[f]ighting corruption leads to a robust and transparent marketplace."

The next six months will offer additional insight into the Trump Administration's enforcement priorities and intentions with regard to the FCPA. In the end, the government's actions—or lack thereof—may speak louder than its words.

Stay tuned.

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The Foreign Corrupt Practices Act Clearinghouse (FCPAC) is a free public database. The FCPAC was developed by researchers at Stanford Law School in collaboration with attorneys at Sullivan & Cromwell LLP. The database is available at <http://fcpa.stanford.edu>.

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