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RISK & COMPLIANCE JOURNAL.

# A Quiet Beginning for 2018 FCPA Enforcement

*By William Garrett*

Apr 16, 2018 11:31 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.)*

Foreign Corrupt Practices Act enforcement is off to a slow start this year.

The U.S. Department of Justice and the U.S. Securities and Exchange Commission filed fewer enforcement actions in the first three months of 2018 than in any first quarter since 2014. Nonetheless, the SEC and DOJ continue to investigate dozens of companies for potential FCPA violations, and several companies announced new investigations since the start of the year. At least three companies are likely to settle FCPA actions with the DOJ, the SEC or both in the coming months, based on accounting accruals disclosed in SEC filings.

## Enforcement statistics

The DOJ filed one FCPA enforcement action against a company and one related action against an executive at that firm in the first three months of 2018, while the SEC filed two corporate FCPA enforcement actions. The DOJ unsealed indictments filed in August 2017 against five individuals charged with FCPA violations and filed charges against one new defendant in an existing FCPA action.

The three corporate actions were settled at the time of filing, while prosecutions of the seven individuals remain ongoing.

Figure 1 shows all the enforcement actions filed or unsealed between January and March.

Two of the three corporate actions initiated this year (Kinross Gold and Elbit Imaging) are based solely on violations of the FCPA's accounting provisions, which do not require proof of bribery and are not subject to the same jurisdictional restraints as the statute's anti-bribery provisions. Most of the FCPA cases that allege violations of one or more of the accounting

**Fig. 1, DOJ and SEC Enforcement Actions Announced in Q1 2018**

Case	Agency	Initiation Date	Countries Implicated	FCPA Claims	Sanctions
U.S. v. Luis Carlos de Leon-Perez, et al.	DOJ	Aug. 23, 2017 (unsealed Feb. 12, 2018)	Venezuela	Anti-Bribery	Ongoing
U.S. v. Transport Logistics International, Inc.	DOJ	Jan. 10	Russia	Anti-Bribery	\$2,000,000
U.S. v. Mark T. Lambert	DOJ	Jan. 10	Russia	Anti-Bribery	Ongoing
In the Matter of Elbit Imaging Ltd.	SEC	Mar. 9	Romania	Books & Records Internal Controls	\$500,000
In the Matter of Kinross Gold Corporation	SEC	Mar. 26	Ghana, Mauritania	Books & Records Internal Controls	\$950,000
U.S. v. Joo Hyun Bahn, et al. (def. Andrew Simon)	DOJ	Mar. 30 (initially filed Dec. 15, 2016)	Unknown	Anti-Bribery	Ongoing

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provisions are predicated on evidence of bribery.

Nonetheless, a few FCPA cases fall into the category of “pure” accounting violations. In these actions, the government alleges only that the company created a heightened risk of bribery by maintaining faulty books and records and insufficient internal controls, and not that the company actually made or offered to make improper

payments to a foreign government official.

At least three cases can be characterized as “pure” accounting violations cases with no allegations of bribery: In the Matter of Elbit Imaging (2018); In the Matter of Hyperdynamics (2015); and SEC v. Oracle (2012). In each of these cases, the SEC charged the company with violating the FCPA’s accounting provisions by keeping shoddy records of transactions where bribery could have occurred, or for not implementing proper internal controls to ensure bribes weren’t being paid.

The four enforcement actions filed in the first quarter represent a decline compared with typical first-quarter enforcement activity. Over the last 10 years the DOJ and SEC initiated, on average, eight enforcement actions during the first three months of each calendar year, which is double the number of actions filed since the start of 2018. First-quarter enforcement activity was the lowest since 2014 and tied for the second lowest in a decade.

Figure 2 depicts the number of enforcement actions filed in the first quarter for each of the last 10 years.

**Sanctions**

First-quarter sanctions were also significantly lower than those imposed in any other first-quarter period during the last ten years. The government settled three FCPA cases in the first quarter of 2018 and imposed total sanctions of \$3.45 million, compared with total sanctions of \$69.6 million in the first quarter of 2017 and \$499.2 million in the first quarter of 2016.

Figure 3 shows total sanctions imposed in enforcement actions initiated in the first quarter of the calendar year, for each of the last ten years.

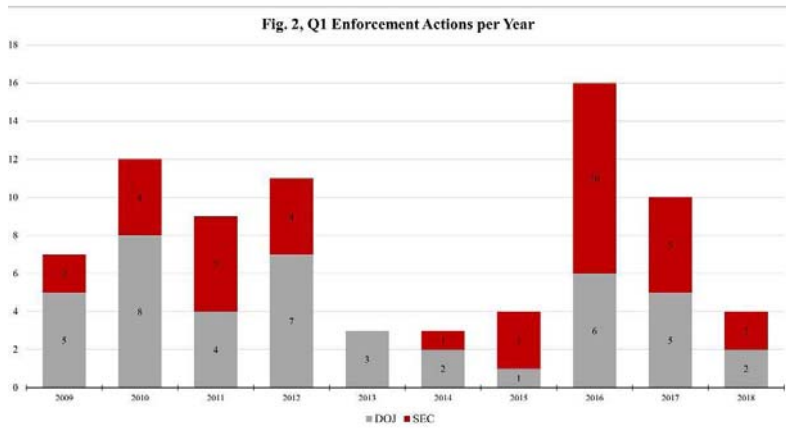


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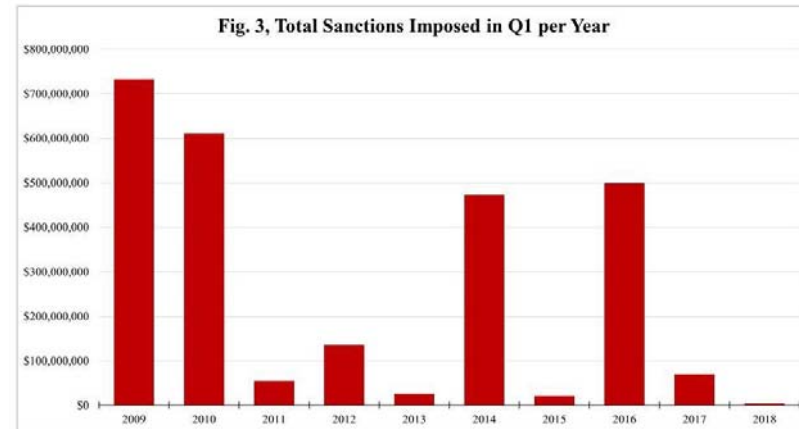


PHOTO: FCPA CLEARINGHOUSE

Company	Agency	Date Agency Investigation Initiated	Internal Investigation Disclosed?	Country/Region Investigated
Albemarle Corporation	DOJ SEC	Feb. 28 Feb. 28	Yes	Unknown
CEMEX, S.A.B. de C.V.	DOJ SEC	Mar. 12 Dec. 9, 2016	Yes	Colombia
Credit Suisse Group AG	DOJ SEC	Feb. 14 Feb. 14	No	Asia-Pacific
OSI Systems, Inc.	DOJ SEC	Feb. 1 Feb. 1	No	Unknown
SAP SE	DOJ SEC	Feb. 28 Feb. 28	Yes	Unknown

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As of the end of the first quarter, U.S. authorities were investigating at least 62 different entity groups for possible FCPA violations, including five entity groups that first disclosed an investigation in 2018.

Figure 4 shows all entity groups that disclosed new FCPA investigations in the first quarter.

In the first quarter the SEC and DOJ resolved 12 FCPA-related investigations involving nine different entity groups. According to publicly available information, the SEC concluded two investigations by filing enforcement actions and closed four investigations without taking further action.

The DOJ filed one enforcement action and closed five investigations without taking further action (although the department actually notified one company of the closure in late 2017). The DOJ did not resolve any criminal investigations pursuant to the revised FCPA Corporate Enforcement Policy.

Figure 5 shows all investigation resolutions that were disclosed in the first quarter of 2018.

### What's next

**Fig. 5, DOJ and SEC Investigations Resolved in Q1 2018**

Company	Agency	Date Resolved	Investigation Length	Resolution Type
Cobalt International Energy, Inc.	SEC	Jan. 29	10 months	Closed
Core Laboratories N.V.	SEC	Feb. 5	12 months	Closed
Elbit Imaging Ltd.	SEC	Mar. 9	Unknown	Action Filed
Exterran Corporation	DOJ	Feb. 28	13 months	Closed
	SEC	Feb. 28	13 months	Closed
Juniper Networks, Inc.	DOJ	Feb. 9	54 months	Closed
Kinross Gold Corporation	DOJ	Nov. 7, 2017 (discl. Mar. 26)	36 months	Closed
	SEC	Mar. 26	49 months	Action Filed
Sanofi	DOJ	Feb. 1	59 months	Closed
Teradata Corporation	DOJ	Feb. 20	Unknown	Closed
	SEC	Jan. 16	Unknown	Closed
Transport Logistics International, Inc.	DOJ	Jan. 10	Unknown	Action Filed

PHOTO: FCPA CLEARINGHOUSE

in anticipated settlement costs to resolve FCPA-related investigations by the DOJ and SEC dating back to at least May 2012.

Notably, Walmart already disclosed \$877 million in legal fees and expenses related to the FCPA investigation, which is more than three times the dollar value of the anticipated sanctions. Though the timing of these settlements is uncertain, disclosure of the accruals indicates enforcement actions may be imminent.

Finally, though it received notice last year the DOJ had concluded its investigation, Vantage Drilling International disclosed in its Form 10-K filed on March 29 it reached a tentative agreement to resolve the SEC's FCPA investigation. Vantage further disclosed it accrued \$5 million for the anticipated settlement, which the company expects to occur in the second quarter.

*Correction: The U.S. Securities and Exchange Commission and Department of Justice filed fewer enforcement actions in the first three months of 2018 than in any first quarter since 2014. An earlier version of this article said the total was the lowest for a first quarter since the first three months of 2013.*

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At least three settlements are looming. In its Form 20-F filed on Feb. 27, Fresenius Medical Care & Co. KGaA disclosed it accrued €200 million (\$246 million) in anticipated settlement costs to resolve FCPA-related investigations by the DOJ and SEC dating back to at least October 2014.

Similarly, in an 8-K report filed on Nov. 16, Walmart Stores disclosed it accrued \$283 million

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