

## 2018 FCPA Year in Review

The FCPA Clearinghouse’s 2018 Year in Review provides an overview of some of the more notable trends and statistics to emerge from last year’s FCPA enforcement activity.

### Enforcement Statistics

There are a number of different ways to define FCPA enforcement activity and to count the number of new actions initiated each year. The FCPA Clearinghouse does not advocate one counting methodology over another, but instead presents the data in a number of different ways so that users can make their own informed judgments. Because our counting methodologies rely on defined terms (which are denoted below in bold), we make those definitions available at the “[Definitions](#)” tab of the [About Us](#) page.

FCPA enforcement activity increased slightly in 2018, bringing the number of proceedings filed last year to just above the ten-year average. Figure 1 presents the number of [Enforcement Actions](#) filed per year for each of the last ten years. For purposes of these analytics, we treat declinations with disgorgement pursuant to the [DOJ’s Revised Corporate Enforcement Policy](#) as **enforcement actions**. The increase in enforcement activity in 2018 is attributable entirely to a rise in SEC enforcement actions. The SEC initiated 18 enforcement actions in 2018 compared to eight in 2017, representing a 125 percent increase in year over year enforcement.

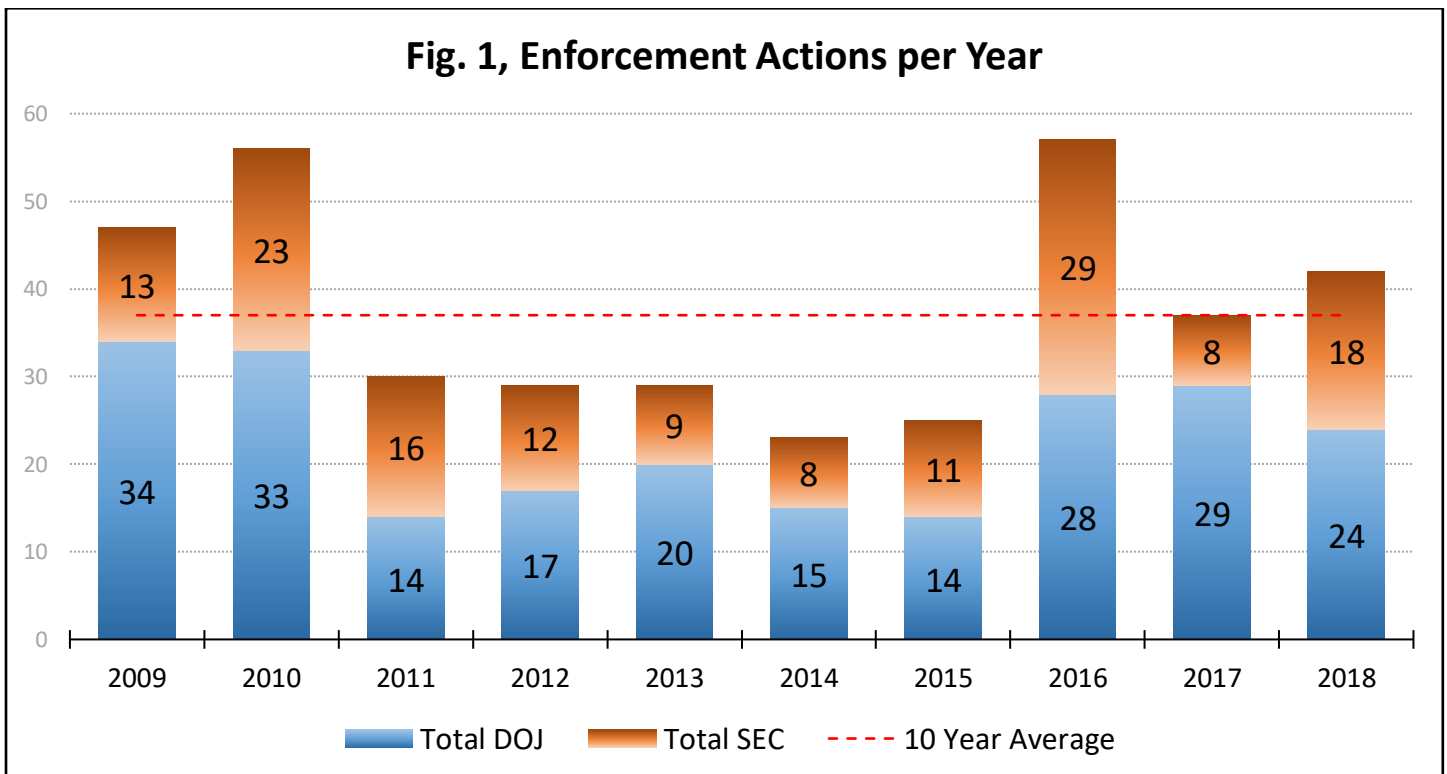


Figure 2 presents the number of [FCPA Matters](#) initiated per year for each of the last ten years. FCPA matters are groups of related enforcement actions that share a common bribery scheme.

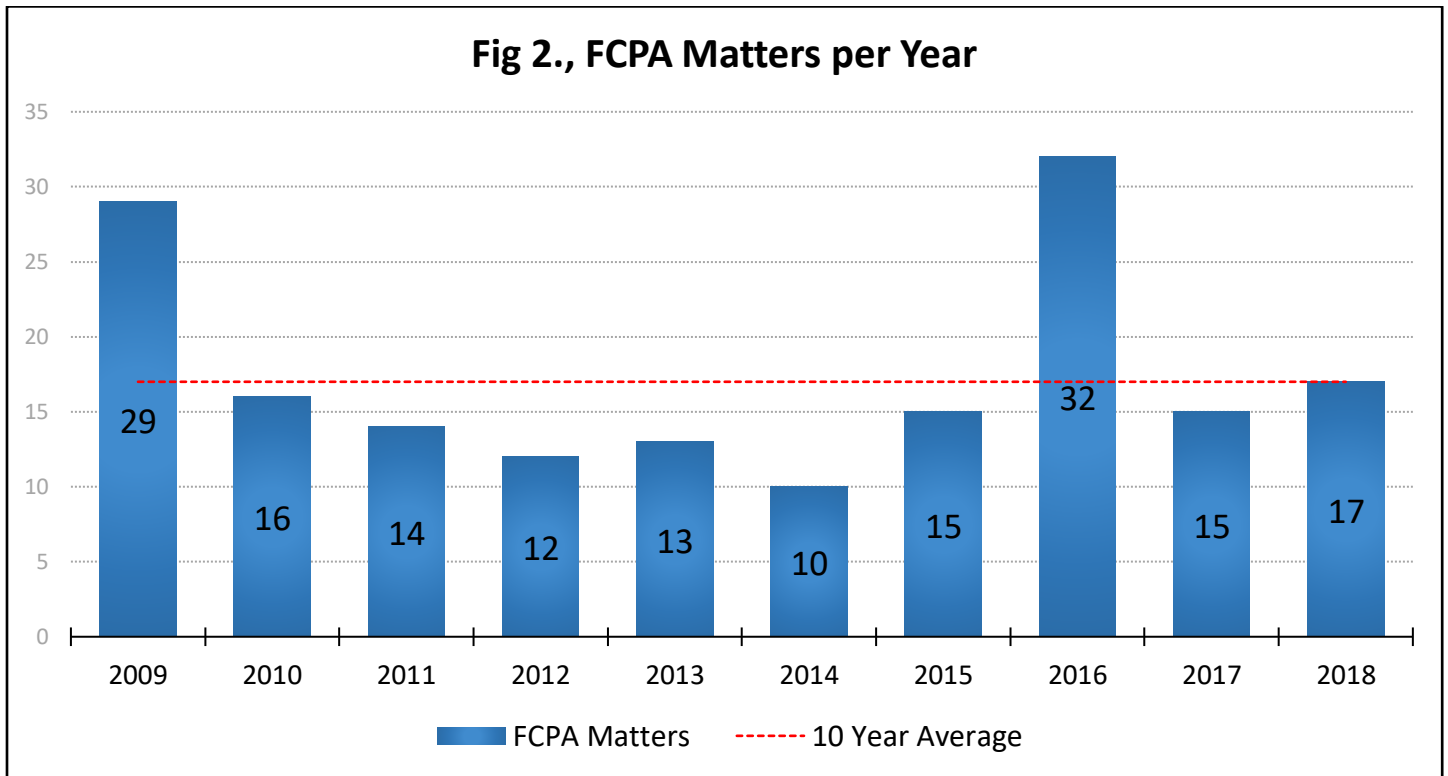
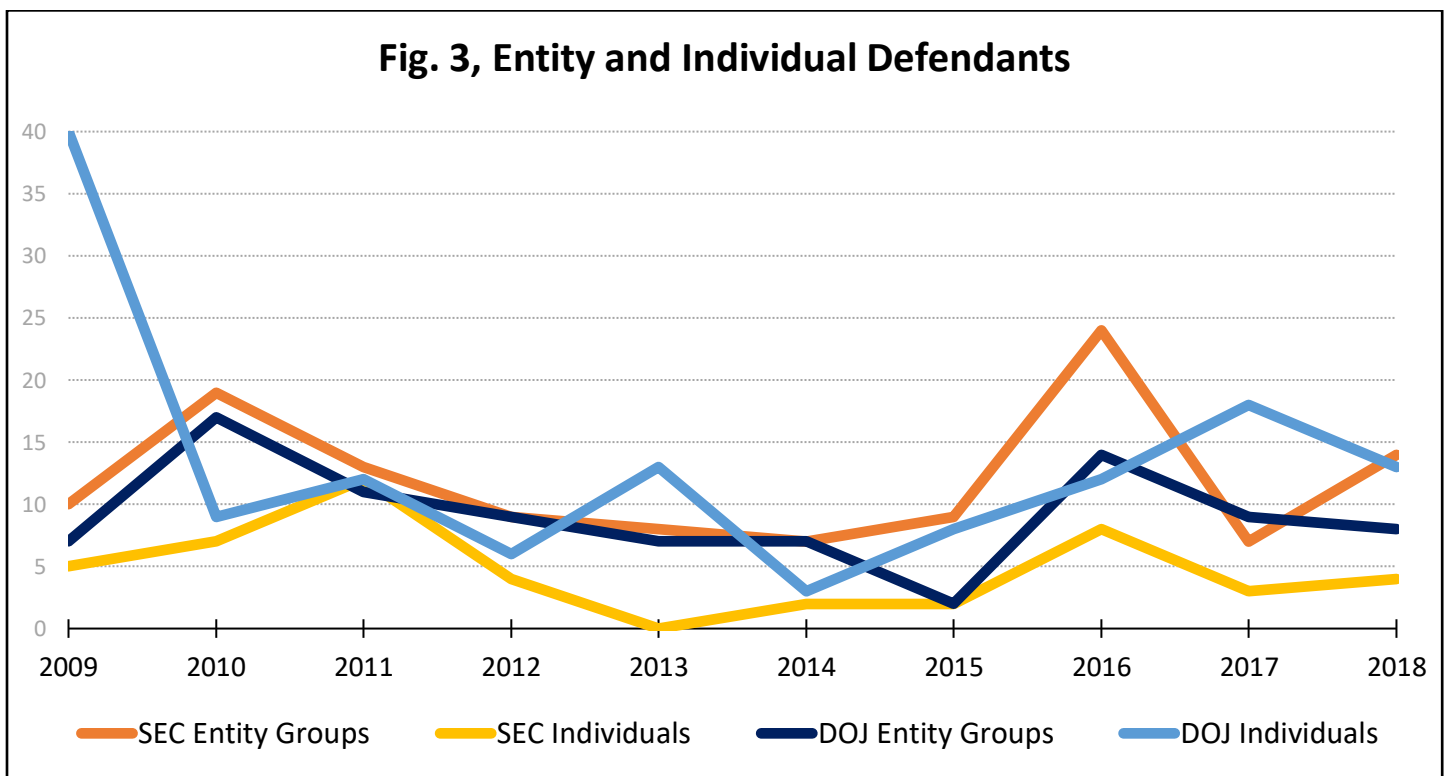


Figure 3 depicts the number of [Entity Groups](#) and individuals subject to FCPA-related enforcement activity over the last ten years. In 2018, the SEC sued 14 entity groups and four individual defendants for FCPA-related violations, while the DOJ charged eight entity groups and 13 individual defendants.

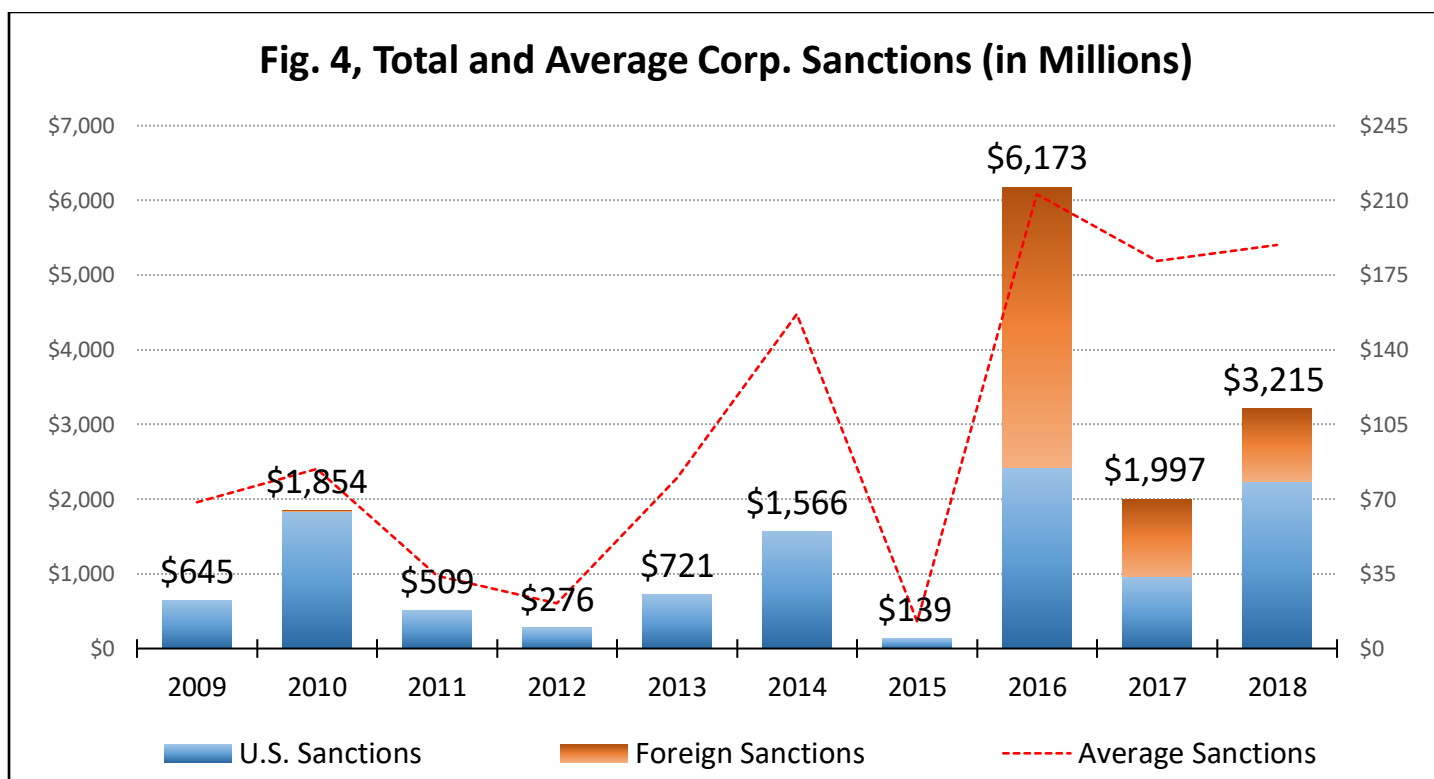


The number of individuals criminally prosecuted by the DOJ for FCPA-related offenses decreased markedly between 2017 and 2018, both in absolute numbers and as a percentage of all FCPA-related criminal prosecutions. In fact, over the last five years just shy of 29 percent of all corporate criminal actions have involved a related criminal prosecution of company employees or agents. These numbers indicate that, despite the DOJ's recent emphasis on individual accountability, many of the individuals responsible for corporate wrongdoing have escaped prosecution in the United States, although in some instances investigations may be ongoing and individuals may be indicted at a later date. Other jurisdictions may also prosecute individual wrongdoers under their own domestic or foreign bribery laws.

Appendix 1 to this report provides a list of all FCPA-related enforcement actions initiated in 2018, as well as a few actions that were announced in 2018 but initially filed under seal in 2017. The latter actions are noted here for reference only; they are not included in the 2018 annual statistics.

## Sanctions

Total sanctions paid by entity groups in FCPA-related enforcement actions increased by 60% in 2018, and the average sanction paid by entities was the second highest in a decade. Figure 4 shows the [total and average sanctions imposed on entity groups](#) in FCPA-related enforcement actions, including amounts imposed by the SEC or DOJ that were ultimately owed to foreign regulators.



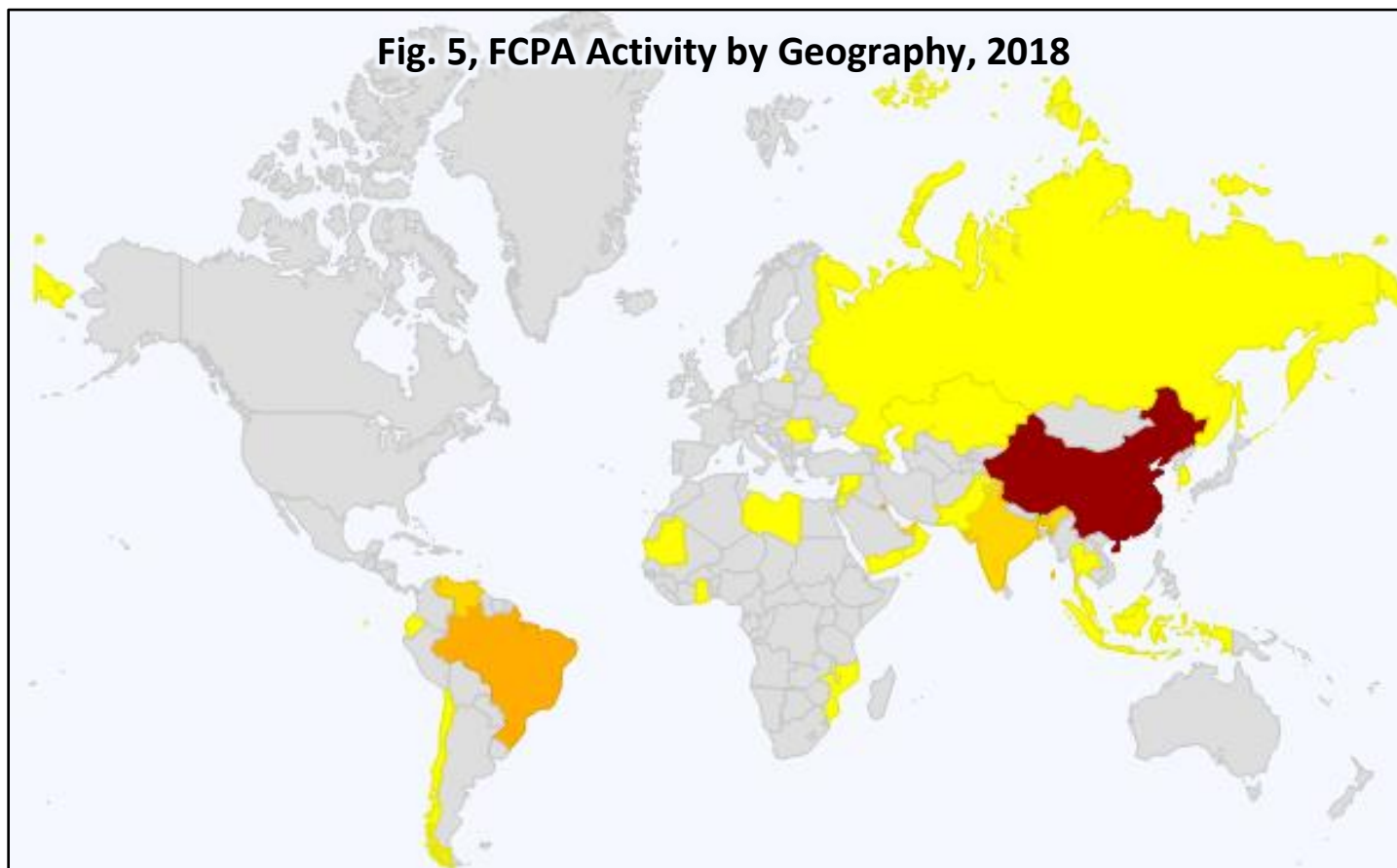
Global monetary sanctions imposed on entity groups in FCPA-related enforcement actions initiated in 2018 totaled over \$3.2 billion, with a per group average of over \$189 million. Five of the 17 entity groups that settled FCPA claims in 2018 paid over 97 percent of the total sanctions. Those companies are [Petrobras \(\\$1.7 billion\)](#), [Societe Generale \(\\$861 million\)](#), [Panasonic Corp. \(\\$281 million\)](#), [Legg Mason \(\\$99 million\)](#), and [Credit Suisse Group \(\\$77 million\)](#).

U.S. authorities continued to cooperate closely with officials in other countries to pursue their anti-corruption agenda. Last year, press releases issued by the SEC and DOJ noted foreign assistance in the prosecution of 52 percent of all FCPA-related enforcement actions, and global settlements led to several of the highest monetary sanctions in FCPA history. Brazil secured a significant majority of the fines levied in the enforcement actions

against [Petrobras](#), and [Societe Generale](#) paid to French authorities half of the criminal penalty imposed on the company for FCPA violations. To date, six of the [top ten highest monetary sanctions](#) imposed on entity groups for FCPA-related misconduct involve coordinated resolutions of multi-jurisdictional enforcement activity.

## **Geography**

The FCPA Clearinghouse identified 24 common bribery schemes among the 42 enforcement actions filed in 2018. China took the top spot as the country most frequently implicated in FCPA-related bribery schemes, with six separate schemes. Brazil and Kuwait tied for the number two spot with three, and India, the United Arab Emirates, and Venezuela tied for third place, each with two FCPA-related schemes. When examined by region, however, the Middle East was most frequently implicated in FCPA-related bribery schemes (10), followed by Asia (9), Latin America (6), Africa (4), and Europe (2).

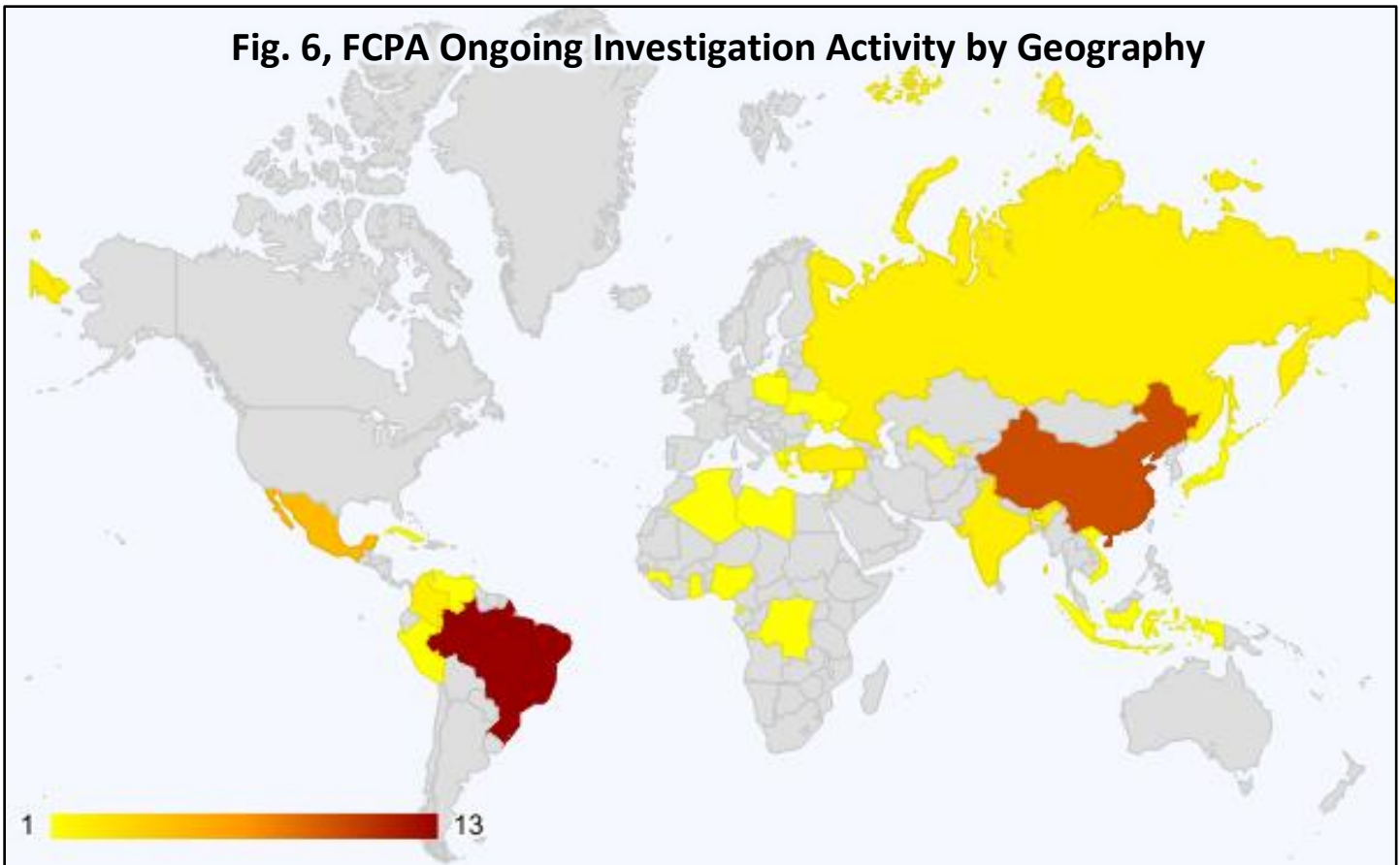


## **Investigations**

As of the close of 2018, at least 54 companies had disclosed an ongoing FCPA-related **Investigation** by U.S. authorities, and an additional 13 companies had disclosed an ongoing internal investigation into potential FCPA violations. By way of comparison, at the end of 2017, at least 66 companies had reported ongoing FCPA-related investigations by the DOJ or SEC. At least 13 companies first disclosed an FCPA-related investigation in their 2018 SEC filings.

While China took the top spot in FCPA-related enforcement actions initiated in 2018, Brazil is the country most frequently cited in connection with ongoing investigations, with at least 13 companies disclosing investigations into possible FCPA-related misconduct in Brazil. China ranks second with 10, and Mexico is third with five. Figure 6 shows the countries implicated in ongoing FCPA-related investigations.

**Fig. 6, FCPA Ongoing Investigation Activity by Geography**



According to information disclosed in SEC filings and charging and settlement documents, last year the SEC resolved at least 23 publicly-disclosed FCPA-related investigations, and the DOJ resolved at least 18. The SEC resolved 14 investigations by enforcement action, one of which alleged no FCPA violations, and closed at least nine investigations without taking further action. Additionally, two companies, [Lennox International Inc.](#) and [Societe Generale S.A.](#), ceased making disclosures connected with their SEC investigations. While those investigations may be complete, the FCPA Clearinghouse treats them as ongoing until two years have passed since the date of the last disclosure.

By comparison, six publicly-disclosed DOJ investigations resulted in enforcement actions filed in 2018, including one declination with disgorgement pursuant to the DOJ's FCPA Corporate Enforcement Policy. The DOJ closed at least 11 investigations with no further action and issued two formal declinations pursuant to the Corporate Enforcement Policy (with disgorgement paid to another agency or not at all), although the SEC sued at least two of those companies, [Sanofi](#) and [United Technologies Corporation](#), in stand-alone SEC enforcement actions initiated in 2018.

### **Hoskins**

On August 24, the Court of Appeals for the Second Circuit affirmed in part a lower court ruling holding that the government could not charge [Lawrence Hoskins](#), an employee of [Alstom S.A.](#)'s U.K. subsidiary, with conspiring to violate the FCPA unless he fell within the category of persons directly covered by the statute. However, the Second Circuit reversed the portion of the lower court's ruling that prohibited the government from attempting to establish that Hoskins was liable as an agent of Alstom's U.S. subsidiary for conspiring with foreign nationals who committed acts in furtherance of the misconduct while in the United States. The *Hoskins* decision thus limits the government's ability to charge foreign companies and individuals with conspiracy, while allowing the government to pursue agency theories of liability. Given the government's history of

charging foreign nationals under expansive principles of agency liability, it is not clear whether *Hoskins* will operate as a meaningful limitation on FCPA enforcement activity.

## **Update to the Yates Memo**

On November 29, 2018, Deputy Attorney General Rod Rosenstein [announced](#) revisions to the DOJ memorandum outlining the agency's policy on individual accountability for corporate wrongdoing, popularly known as the "[Yates Memo](#)." In his remarks, delivered at the American Conference Institute's 35<sup>th</sup> International Conference on the FCPA, Rosenstein reinforced the Department's focus on holding individuals accountable for corporate misconduct and emphasized companies' obligation to disclose their employees' involvement in criminal conduct. Rosenstein also made clear that investigations should not be delayed to collect information about individuals "whose involvement [in the misconduct] was not substantial, and who are not likely to be prosecuted." To that end, Rosenstein revised the Yates policy, which had required companies seeking cooperation credit in a criminal investigation to "identify all individuals involved in or responsible for the misconduct at issue. Going forward, if the DOJ determines that a company has not made a good faith effort to identify all individuals substantially involved or responsible for the misconduct, it will decline to award any cooperation credit. Rosenstein encouraged "[c]ompanies that want to cooperate in exchange for credit ... to have full and frank discussions with prosecutors about how to gather the relevant facts."

Rosenstein also noted that the "all or nothing" approach to cooperation credit adopted in the original Yates Memo was counterproductive in civil cases, because civil litigators cannot take the time to pursue civil cases against every individual who may be liable for the misconduct, nor can they afford to delay corporate resolutions until they identify all potentially implicated employees. Under the revised policy, civil litigators have increased discretion to award partial cooperation credit to a company that "honestly" and "meaningfully" assists with the government's civil investigation, even if the company does not qualify for full credit. Other policy changes permit DOJ attorneys to negotiate civil releases for individuals who do not warrant additional investigation and to consider an individual's ability to pay in deciding whether to pursue a civil judgment. These policy changes may have little real-world impact as the DOJ appears to have largely abandoned FCPA civil enforcement. The Department last filed a civil FCPA case in 2001 ([U.S. and S.E.C. v. KPMG Siddharta Siddharta & Harsono, et al.](#)).

## **Looking Ahead**

Two years into President Trump's term, there are no signs of an ebb in FCPA enforcement activity, and dire predictions about the demise of the FCPA have not been realized. With U.S. regulators continuing to investigate more than 50 companies for possible FCPA violations, and hundreds of millions of dollars accrued in anticipation of forthcoming settlements, the FCPA, at least for the time being, seems on fairly safe footing.

**Appendix 1:  
FCPA-Related Violations Charged or Announced in 2018 [By Defendant]**

Case	Date Initiated	Date Announced	Sanctions
<a href="#">U.S. v. Jose Orlando Camacho (DOJ)</a>	July 5, 2017	Sept. 13, 2018	Ongoing
<a href="#">U.S. v. Luis Carlos de Leon-Perez, et al. (DOJ)</a>			
Luis Carlos de Leon-Perez	Aug. 23, 2017	Feb. 12, 2018	Ongoing
Nervis Gerardo Villalobos-Cardenas	Aug. 23, 2017	Feb. 12, 2018	Ongoing
Cesar David Rincon-Godoy	Aug. 23, 2017	Feb. 12, 2018	Ongoing
Alejandro Isturiz-Chiesa	Aug. 23, 2017	Feb. 12, 2018	Ongoing
Rafael Ernesto Reiter-Munoz	Aug. 23, 2017	Feb. 12, 2018	Ongoing
<a href="#">U.S. v. Michael Leslie Cohen (DOJ)</a>	Oct. 5, 2017	Jan. 3, 2018	Ongoing
<a href="#">U.S. v. Alejandro Andrade Cedeno (DOJ)</a>	Dec. 18, 2017	Nov. 20, 2018	10 yrs prison; \$1,000,000,100
<a href="#">U.S. v. Lawrence W. Parker, Jr. (DOJ)</a>	Dec. 20, 2017	Apr. 13, 2018	\$701,850
<a href="#">U.S. v. Mark T. Lambert (DOJ)</a>	Jan. 10, 2018	Jan. 12, 2018	Ongoing
<a href="#">U.S. v. Transport Logistics International, Inc. (DOJ)</a>	Jan. 10, 2018	Mar. 13, 2018	\$2,000,000
<a href="#">U.S. v. Arturo Escobar Dominguez (DOJ)</a>	Feb. 20, 2018	Feb. 20, 2018	4 yrs prison; \$100
<a href="#">In the Matter of Elbit Imaging Ltd. (SEC)</a>	Mar. 9, 2018	Mar. 9, 2018	\$500,000
<a href="#">U.S. v. Gabriel Arturo Jimenez Aray (DOJ)</a>	Mar. 13, 2018	Mar. 13, 2018	3 yrs prison; \$38,000,100
<a href="#">U.S. v. Donville Inniss (DOJ)</a>	Mar. 15, 2018	Aug. 6, 2018	Ongoing
<a href="#">In the Matter of Kinross Gold Corporation (SEC)</a>	Mar. 26, 2018	Mar. 26, 2018	\$950,000
<a href="#">U.S. v. Egbert Yvan Ferdinand Koolman (DOJ)</a>	Apr. 10, 2018	Apr. 13, 2018	3 yrs prison; \$1,308,600
<a href="#">U.S. v. Juan Carlos Castillo Rincon (DOJ)</a>	Apr. 11, 2018	Apr. 26, 2018	Ongoing
<a href="#">U.S. v. Frank Roberto Chatburn Ripalda, et al. (DOJ)</a>			
Frank Roberto Chatburn Ripalda	Apr. 19, 2018	Apr. 19, 2018	Ongoing
Jose Larrea	Apr. 19, 2018	Apr. 19, 2018	27 mos prison; \$53,880
<a href="#">In the Matter of The Dun &amp; Bradstreet Corporation (SEC)</a>	Apr. 23, 2018	Apr. 23, 2018	\$9,221,484
<a href="#">In the Matter of Panasonic Corporation (SEC)</a>	Apr. 30, 2018	Apr. 30, 2018	\$143,199,019
<a href="#">U.S. v. Panasonic Avionics Corporation (DOJ)</a>	Apr. 30, 2018	Apr. 30, 2018	\$137,403,812
<a href="#">In Re Credit Suisse (Hong Kong) Limited (DOJ)</a>	May 24, 2018	Jul. 5, 2018	\$47,029,916

<a href="#">U.S. v. Petros Contoguris, et al. (DOJ)</a>			
Petros Contoguris	Oct. 12, 2017	Nov. 7, 2017	Ongoing
Vitaly Leshkov	May 24, 2018	May 24, 2018	Ongoing
Azat Martirossian	May 24, 2018	May 24, 2018	Ongoing
<a href="#">In Re Legg Mason, Inc. (DOJ)</a>	June 4, 2018	June 4, 2018	\$64,242,892
<a href="#">U.S. v. Societe Generale S.A. (DOJ)</a>	June 4, 2018	June 4, 2018	\$860,052,488
<a href="#">U.S. v. SGA Societe Generale Acceptance, N.V. (DOJ)</a>	June 4, 2018	June 4, 2018	\$500,400
<a href="#">U.S. v. Tim Leissner (DOJ)</a>	June 7, 2018	Nov. 1, 2018	Ongoing
<a href="#">In the Matter of Beam Inc., n/k/a Beam Suntory Inc. (SEC)</a>	July 2, 2018	July 2, 2018	\$8,181,838
<a href="#">In the Matter of Credit Suisse Group AG (SEC)</a>	July 5, 2018	July 5, 2018	\$29,823,804
<a href="#">U.S. v. Francisco Convit Guruceaga, et al. (DOJ)</a>			
Francisco Convit Guruceaga	July 23, 2018	July 25, 2018	Ongoing
Jose Vincente Amparan Croquer	July 23, 2018	July 25, 2018	Ongoing
Carmelo Antonio Urdaneta Aqui	July 23, 2018	July 25, 2018	Ongoing
Abraham Edgardo Ortega	July 23, 2018	July 25, 2018	Ongoing
Gustavo Adolfo Hernandez Frieri	July 23, 2018	July 25, 2018	Ongoing
Hugo Andre Ramalho Gois	July 23, 2018	July 25, 2018	Ongoing
Marcelo Federico Gutierrez Acosta Y Lara	July 23, 2018	July 25, 2018	Ongoing
Mario Enrique Bonilla Vallera	July 23, 2018	July 25, 2018	Ongoing
<a href="#">U.S. v. Matthias Krull (DOJ)</a>	July 24, 2018	July 25, 2018	10 yrs prison; \$50,100
<a href="#">U.S. v. Jose Manuel Gonzalez-Testino (DOJ)</a>	July 27, 2018	Aug. 1, 2018	Ongoing
<a href="#">U.S. v. Raul Gorrin Belisario (DOJ)</a>	Aug. 16, 2018	Nov. 20, 2018	Ongoing
<a href="#">In Re: Insurance Corporation of Barbados Limited (DOJ)</a>	Aug. 23, 2018	Aug. 23, 2018	\$93,940
<a href="#">In the Matter of Legg Mason, Inc. (SEC)</a>	Aug. 27, 2018	Aug. 27, 2018	\$34,502,494
<a href="#">In the Matter of Sanofi (SEC)</a>	Sept. 4, 2018	Sept. 4, 2018	\$25,206,145
<a href="#">In the Matter of Joohyun Bahn, a/k/a Dennis Bahn (SEC)</a>	Sept. 6, 2018	Sept. 6, 2018	\$225,000
<a href="#">In the Matter of United Technologies Corporation (SEC)</a>	Sept. 12, 2018	Sept. 12, 2018	\$13,986,534
<a href="#">In the Matter of Patricio Contesse Gonzalez (SEC)</a>	Sept. 25, 2018	Sept. 25, 2018	\$125,000
<a href="#">In the Matter of Petroleo Brasileiro S.A. – Petrobras (SEC)</a>	Sept. 27, 2018	Sept. 27, 2018	\$1,018,793,797
<a href="#">In re Petroleo Brasileiro S.A. - Petrobras (DOJ)</a>	Sept. 27, 2018	Sept. 27, 2018	\$767,880,000
<a href="#">In the Matter of Stryker Corporation (SEC)</a>	Sept. 28, 2018	Sept. 28, 2018	\$7,800,000



[U.S. v. Joseph Baptiste, et al. \(DOJ\)](#)

Joseph Baptiste	Aug. 28, 2017	Aug. 29, 2017	Ongoing
Roger Richard Boncy	Oct. 30, 2018	Oct. 30, 2018	Ongoing

[U.S. v. Low Taek Jho, et al. \(DOJ\)](#)

Low Taek Jho	Oct. 3, 2018	Nov. 1, 2018	Ongoing
Ng Chong Hwa	Oct. 3, 2018	Nov. 1, 2018	Ongoing

[U.S. v. Ivan Alexis Guedez \(DOJ\)](#)

	Oct. 12, 2018	Oct. 30, 2018	Ongoing
--	---------------	---------------	---------

[In the Matter of Vantage Drilling International \(SEC\)](#)

	Nov. 19, 2018	Nov. 19, 2018	\$5,000,000
--	---------------	---------------	-------------

[In the Matter of Paul A. Margis \(SEC\)](#)

	Dec. 18, 2018	Dec. 18, 2018	\$75,000
--	---------------	---------------	----------

[In the Matter of Takeshi "Tyrone" Uonaga \(SEC\)](#)

	Dec. 18, 2018	Dec. 18, 2018	\$50,000
--	---------------	---------------	----------

[U.S. v. Jean Boustani, et al. \(DOJ\)](#)

Jean Boustani	Dec. 19, 2018	Jan. 3, 2019	Ongoing
Manuel Chang	Dec. 19, 2018	Jan. 3, 2019	Ongoing
Andrew Pearse	Dec. 19, 2018	Jan. 3, 2019	Ongoing
Surjan Singh	Dec. 19, 2018	Jan. 3, 2019	Ongoing
Detelina Subeva	Dec. 19, 2018	Jan. 3, 2019	Ongoing

[In Re: Polycom, Inc. \(DOJ\)](#)

	Dec. 20, 2018	Dec. 20, 2018	\$20,305,074
--	---------------	---------------	--------------

[In the Matter of Polycom, Inc. \(SEC\)](#)

	Dec. 26, 2018	Dec. 26, 2018	\$16,306,336
--	---------------	---------------	--------------

[In the Matter of Centrais Eletricas Brasileiras S.A. \(SEC\)](#)

	Dec. 26, 2018	Dec. 26, 2018	\$2,500,000
--	---------------	---------------	-------------