

2021 Q2 Report

The FCPA Clearinghouse’s quarterly report provides an overview of some of the more notable trends and statistics in FCPA enforcement activity to emerge during the second quarter of 2021.

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.

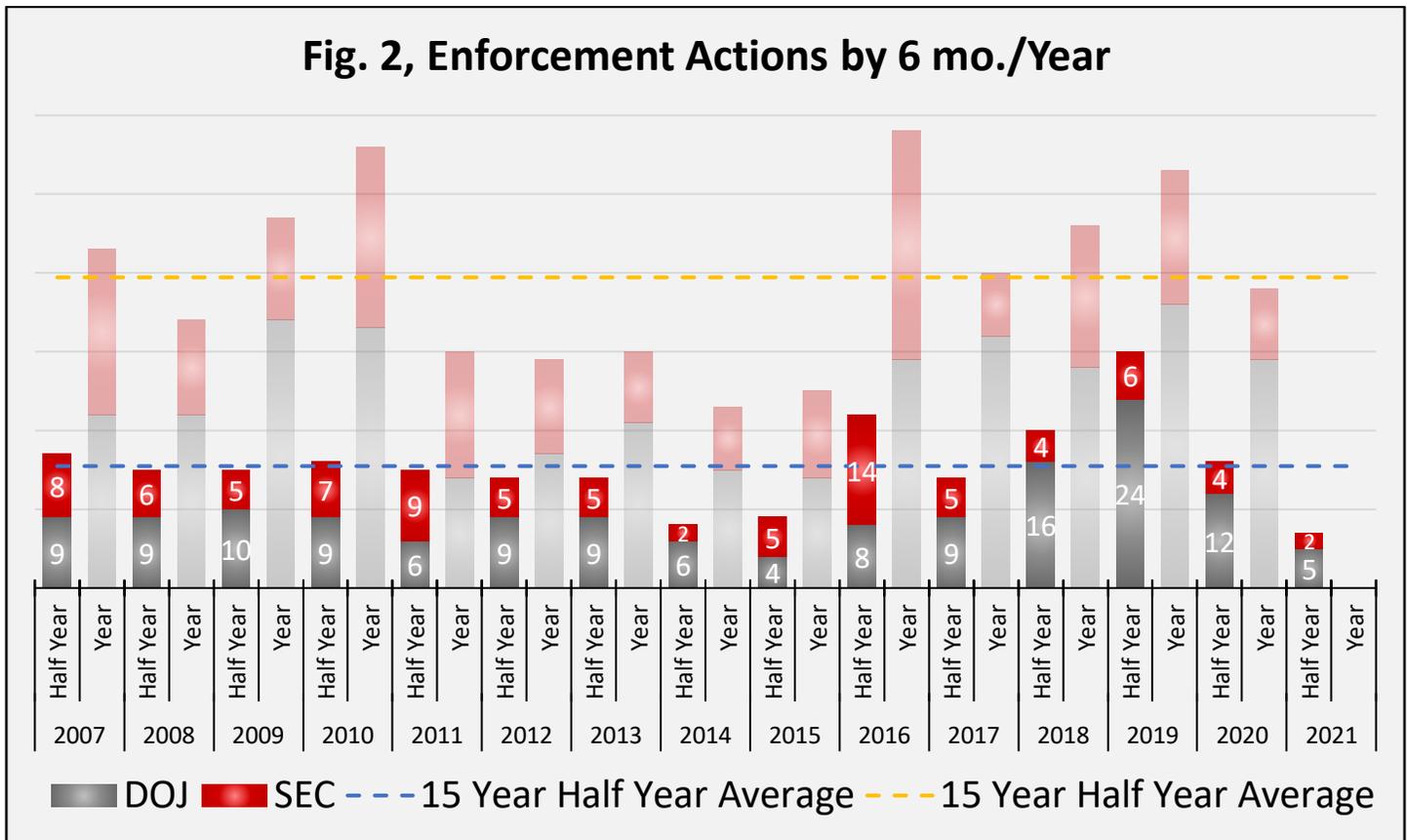
Enforcement activity remained quiet in the second quarter of 2021, with the DOJ filing three FCPA-related [Enforcement Actions](#) and announcing three previously filed actions, while the SEC filed only one new action. Five of the seven enforcement actions filed or announced between April and June involved individual defendants, and two involved subsidiaries of the [John Wood Group plc](#). Figure 1 shows all the enforcement actions filed, announced, or unsealed between April and June of 2021.

**Fig. 1, FCPA-Related Enforcement Actions
Initiated or Announced in Q2, 2021**

Case	Date Initiated	Date Announced/ Unsealed	Sanctions
United States v. Raymond Kohut	Aug. 18, 2020	Apr. 6, 2021	Ongoing
United States v. Naeem Riaz Tyab, et al.	Feb. 7, 2019	May 24, 2021	Ongoing
United States v. Peter Weinzierl, et al.	Sep. 18, 2020	May 25, 2021	Ongoing
United States v. Luis Berkman, et al.	May 20, 2021	May 26, 2021	Ongoing
United States v. Carlos Murillo Prijic	May 24, 2021	May 26, 2021	Ongoing
In the Matter of Amec Foster Wheeler Limited	Jun. 25, 2021	Jun. 25, 2021	\$22,764,287
United States v. Amec Foster Wheeler Energy Limited	Jun. 25, 2021	Jun. 25, 2021	\$18,375,000

Enforcement activity for the first half of 2021 tracks well below the 15-year average of 15 actions per year. Some commentators ascribe this dip in enforcement to the change in administration, suggesting that increased churn in personnel at the SEC and DOJ in the early months of a new presidency may slow pending investigations or provide companies with new opportunities for negotiation. While plausible, the data is simply too scant to definitively support this theory. In the entire history of the FCPA, only seven new presidents have

been inaugurated, a very small sample size to begin with. Further decreasing the sample size, the four inaugurations prior to that of President Obama in 2009 predate the modern era of FCPA enforcement, which began with the surge in cases around 2005. Data from these early years holds less value due to the comparatively low levels of enforcement activity. Further, comparing the last three changes of administration shows no consistent pattern of depressed enforcement in the first six months of a new presidency. The first halves of both 2009 (following President Obama’s inauguration) and 2017 (following President Trump’s inauguration) saw roughly average levels of enforcement activity. On the other hand, the first half of 2021 (following President Biden’s inauguration) has been notably slow, but it’s also possible that enforcement actions under seal this year will later raise the 2021 numbers. Figure 2 compares the level of enforcement activity filed between January and June compared to annual totals in each of the last 15 years.



Investigations

U.S. authorities are currently investigating at least 33 different entity groups for possible FCPA violations. Last quarter, at least one company ([Tsakos Energy Navigation Ltd.](#)) first disclosed a new FCPA-related [Investigation](#) by the DOJ or SEC. Figure 3 shows all entity groups known by the FCPA Clearinghouse to have disclosed new FCPA investigations in the first quarter.

Fig. 3, New FCPA-Related Investigations Disclosed in Q1 2021

Company	Agencies Involved	Date Investigation Disclosed	Internal Investigation Disclosed?	Country/Region Investigated
Tsakos Energy Navigation Ltd.	DOJ, SEC	Apr. 16, 2021	Yes	Brazil

According to information disclosed in SEC filings and charging and settlement documents, the DOJ concluded three publicly-disclosed FCPA-related investigations in the second quarter of 2021, and the SEC concluded one. The DOJ closed its investigation into [BRF S.A.](#) with no further action on May 5, two and a half months after the SEC had concluded its investigation into the company. The DOJ closed its investigation into [Pactiv Evergreen Inc.](#) with no further action on May 6, and both the DOJ and SEC concluded their investigations into [Amec Foster Wheeler](#) by filing enforcement actions against the company on June 25.

Policy Developments

Recent statements from both the White House and the DOJ indicate that the Biden Administration is prioritizing anti-corruption enforcement. In a [memo](#) released on June 3, 2021, the White House identified “countering corruption as a core United States national security interest.” The memo directs policy leaders to conduct an interagency review process and develop a strategy that would allow the Administration to use the full arsenal of its enforcement, financial, foreign policy, and intelligence tools to prevent and combat corruption and to make it increasingly difficult for corrupt actors to shield their activities.

On June 7, Vice President Kamala Harris noted in a [press conference](#) with the President of Guatemala that the United States plans to create an anti-corruption task force that would allow the DOJ, the Treasury Department, and the State Department to work together to conduct investigations and to train and support local law enforcement conducting their own corruption-related investigations. That same day, Attorney General Merrick Garland [announced](#) the establishment of Joint Task Force Alpha, a law enforcement task force that will marshal the investigative and prosecutorial resources of the DOJ, in partnership with the Department of Homeland Security, to enhance U.S. enforcement efforts against human smuggling and trafficking groups operating in Mexico and the Northern Triangle countries of Guatemala, El Salvador, and Honduras. Additionally, the DOJ announced that it will increase its focus on investigations, prosecutions, and asset recoveries relating to corruption in Northern Triangle countries through its FCPA enforcement program, counternarcotics prosecutions, and Kleptocracy Asset Recovery Initiative, and that DOJ personnel will work with Northern Triangle prosecutors and investigators to build corruption cases in those countries.

Similarly, DOJ Criminal Division leadership recently emphasized the agency’s efforts to proactively detect and investigate FCPA violations. Acting Assistant Attorney General Nicholas McQuaid [announced](#) at the June 2, 2021 American Conference Institute’s FCPA Conference that foreign bribery cases are a priority for the DOJ, and could even ratchet up as the result of a new investigative emphasis. McQuaid explained that while corporate self-disclosures remain important, FCPA cases have more recently been driven as much, if not more, by three other sources: proactive and innovative mining of a variety of data for investigative leads, a broad network of law enforcement sources and cooperators, and partnerships with foreign anticorruption agencies.

The recent enactment of the [Anti-Money Laundering Act of 2020](#) (AMLA) gives the Biden Administration another tool to fight corruption, including conduct that is typically regulated through FCPA enforcement. While the AMLA is not primarily focused on anti-corruption measures, it provides the U.S. government with enhanced investigatory tools that could be used to identify and punish corruption.

Looking Ahead

As the Clearinghouse has noted in prior reports, the number of new publicly disclosed FCPA-related investigations has declined significantly in the past few years. The first half of 2021 does not appear to have changed that trend. Taken at face value, the Biden Administration’s recent prioritization of anti-corruption measures along with the DOJ’s goal to develop FCPA cases independent of corporate self-disclosures could lead to an increase in investigations in the coming months and years, which, in turn, would lead to more enforcement activity.