



White Collar Irregularities

2021 FCPA Enforcement Actions and Highlights

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So far, 2021 has seen less activity in terms of enforcement actions under the Foreign Corrupt Practices Act (“**FCPA**”), compared to 2020. In 2021, the United States Department of Justice (“**DOJ**”) took a total of 19 enforcement actions,¹ and the Securities and Exchange Commission² (“**SEC**”) took a total of 4 enforcement actions. Therefore we observe that the DOJ has been a lot more active than the SEC in terms of the number of enforcement actions this year.

Of the 19 enforcement actions taken by the DOJ, 16 of them were related to real persons, which appear to be related to bribery schemes involving state owned energy or petro-chemical companies in Brazil and Venezuela. In terms of sectoral concentration of FCPA enforcement actions of 2021 concerning corporations, we observe a wide array of sectors including energy, advertising, consultancy and engineering services, with a condensation in banking and financial services sector.

DOJ and SEC Enforcement Actions - Highlights

In January 2021, Frankfurt-based multi-national financial services company Deutsche Bank Aktiengesellschaft (“**Deutsche Bank**”), has agreed to a cease-and-desist order and agreed to pay more than \$120 million, which includes around \$43 million to settle the SEC’s charges for violating the books and records and internal accounting controls provisions of the Securities Exchange Act of 1934, as part of coordinated resolutions with the SEC and the DOJ. The charges arise out of a scheme to conceal corrupt payments and bribes made to third-party intermediaries by falsely recording them on the company’s books and records, as well as related internal accounting control violations, and a separate scheme to engage in fraudulent

¹See <https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2021> (last accessed on December 11, 2021).

² See <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml#targetText=SEC%20Enforcement%20Actions%3A%20FCPA%20Cases&targetText=In%202010%2C%20the%20SEC's%20Enforcement,government%20contracts%20and%20other%20business> (last accessed on December 11, 2021).

and manipulative commodities trading practices. According to the SEC's order, Deutsche Bank engaged foreign officials, their relatives, and their associates as third-party intermediaries, business development consultants, and finders to obtain and retain global business. The order finds that Deutsche Bank lacked sufficient internal accounting controls related to the use and payment of such intermediaries, resulting in approximately \$7 million in bribe payments or payments for unknown, undocumented, or unauthorized services. Accordingly, these payments were inaccurately recorded as legitimate business expenses and involved invoices and documentation falsified by Deutsche Bank employees.

In April 2021, the SEC charged Asante Berko, a former executive of a foreign-based subsidiary of a bank holding company with orchestrating a bribery scheme to help a client to win a government contract to build and operate an electrical power plant in the Republic of Ghana in violation of the FCPA. Accordingly, Asante Berko arranged for his firm's client, a Turkish energy company, to funnel at least \$2.5 million to a Ghana-based intermediary to pay illicit bribes to Ghanaian government officials in order to gain their approval of an electrical power plant project. The SEC is seeking monetary penalties against Asante Berko among other remedies.

In June 2021, Amec Foster Wheeler Limited ("**Foster Wheeler**") has agreed to pay more than \$43 million, including more than \$10.1 million to settle the SEC's charges, as part of coordinated resolutions with the SEC, the DOJ, the Brazil Controladoria-General da Uniã/Advocacia-Geral da Uniã, the Ministério Publico Federal and the United Kingdom Serious Fraud Office. According to the SEC and the DOJ, Foster Wheeler, a company that provided project, engineering, and technical services to energy and industrial markets, engaged in a scheme to obtain an approximately \$190 million oil and gas engineering and design contract to design a gas-to-chemicals complex in Brazil (UFN-IV project) from the Brazilian state-owned oil company, Petroleo Brasileiro S.A. (Petrobras). Accordingly, from 2012 through 2014, Foster Wheeler's UK subsidiary made improper payments to Brazilian officials to win the contract. The bribes were paid through its employees and third party agents. According to the order, Foster Wheeler paid approximately \$1.1 million in bribes in connection with obtaining the contract and earned at least \$12.9 million in profits from the corruptly obtained business.

In September 2021, WPP plc ("**WPP**"), London-based world's largest advertising group has agreed to pay more than \$19 million to resolve charges that it violated the anti-bribery, books and records, and internal accounting controls provisions of the FCPA. According to the SEC, WPP implemented an aggressive business growth strategy that included acquiring majority interests in many localized advertising agencies in high-risk markets, and it failed to ensure that these subsidiaries implemented internal accounting controls and compliance policies. The SEC's order also finds that WPP failed to promptly or adequately respond to repeated warning signs of corruption or control failures at certain subsidiaries, along with other schemes and internal accounting control deficiencies related to its subsidiaries in China, Brazil, and Peru.

In October 2021, Switzerland-based global financial institution Credit Suisse Group AG and its U.K. subsidiary Credit Suisse Securities (Europe) Limited (“**Credit Suisse**”) will pay more than \$547 million in penalties, fines and disgorgement, as well as restitution to victims in an amount to be determined, as part of coordinated resolutions. It will also be subject to enhanced compliance and self-reporting, which will include appointment of an independent third party to monitor its transactions, risk management and internal control systems, as well as its existing credit transactions with financially weak and corruption-prone states and companies. According to the DOJ’s press release, Credit Suisse admitted to conspiring to commit wire fraud by defrauding U.S. and international investors in an \$850 million loan to finance a tuna fishing project in Mozambique.

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