February 29, 2024

FCPA 2023 YEAR-END UPDATE

GIBSON DUNN

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MCLE Certificate Information

MCLE Certificate Information

- Approved for 2.0 hours General PP credit.
- CLE credit form must be submitted by **Thursday, March 7**
- Per MCLE guidelines, two passcodes will be announced per hour.
  - Form Link: https://gibsondunn.qualtrics.com/jfe/form/SV_1B6PDaTT0l9Bpb0
    - Most participants should anticipate receiving their certificate of attendance four to eight weeks following the webcast.

- **Please direct all questions regarding MCLE to CLE@gibsondunn.com.**

Gibson Dunn Programs & Resources

Recent Programs

- Bank Secrecy Act/Anti-Money Laundering and International Trade Compliance and Enforcement Annual Update
- FCPA Trends in the Emerging Markets (Webcast)

Resources

- 2023 Year-End FCPA Update
- Gibson Dunn FCPA Practice Group
- Gibson Dunn Webcasts
- Subscribe to Gibson Dunn Alerts

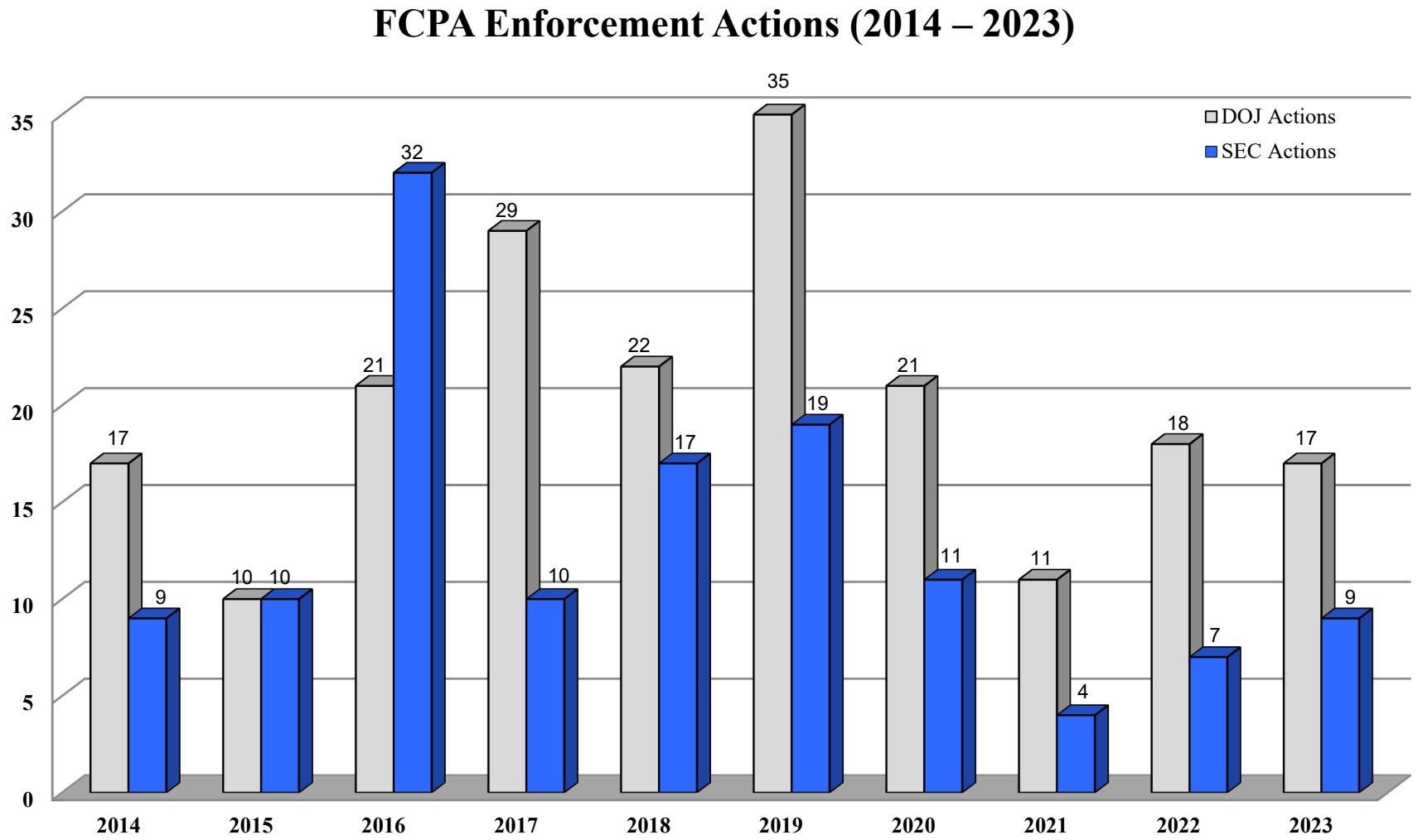
Agenda

01	2023 FCPA Statistics
02	2023 FCPA Legal and Guidance Updates
03	2023 FCPA Enforcement Actions and Key Observations
04	2023 DOJ Corporate Enforcement Framework Updates and Compliance Program Best Practices

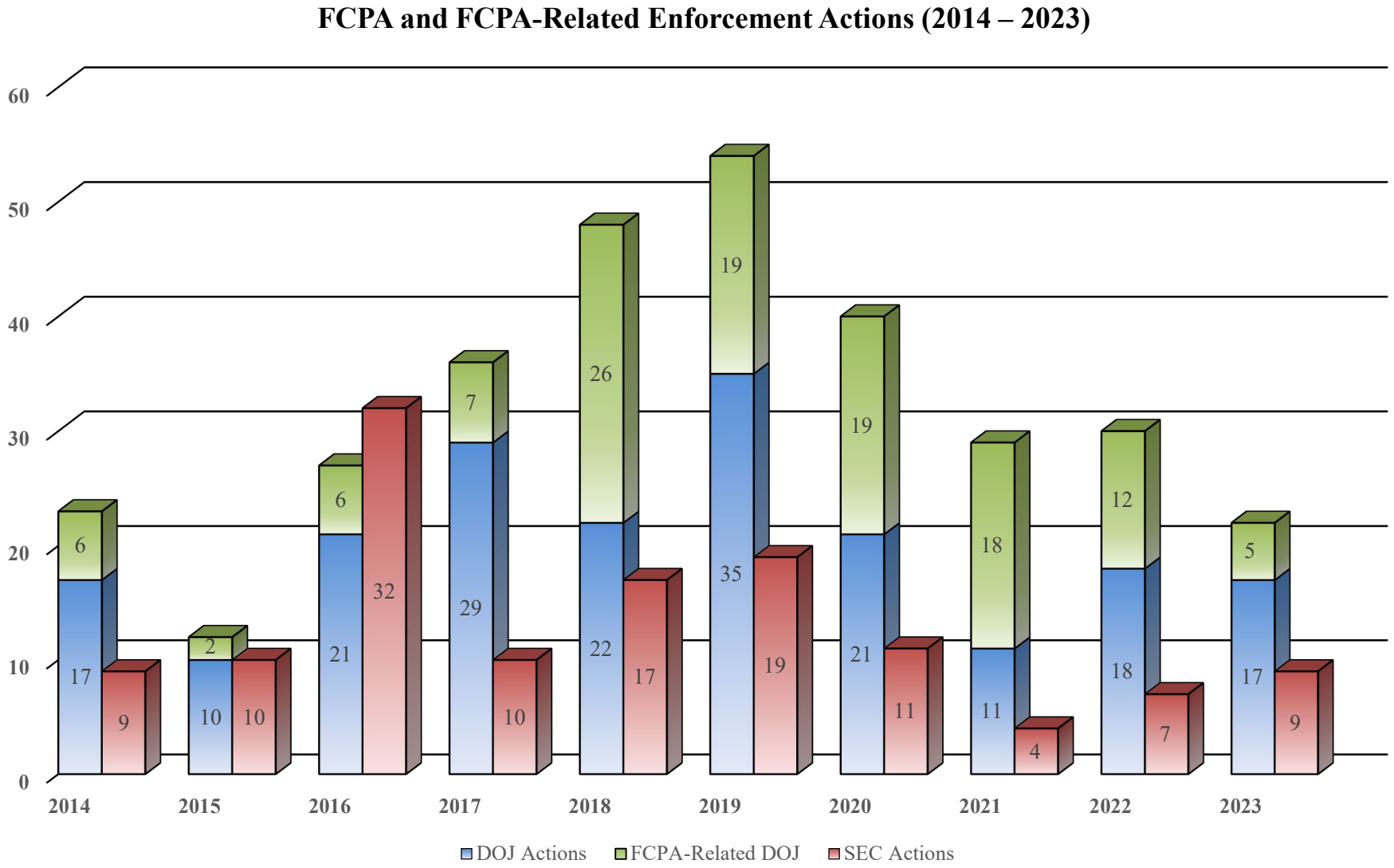
2023 FCPA Statistics

01

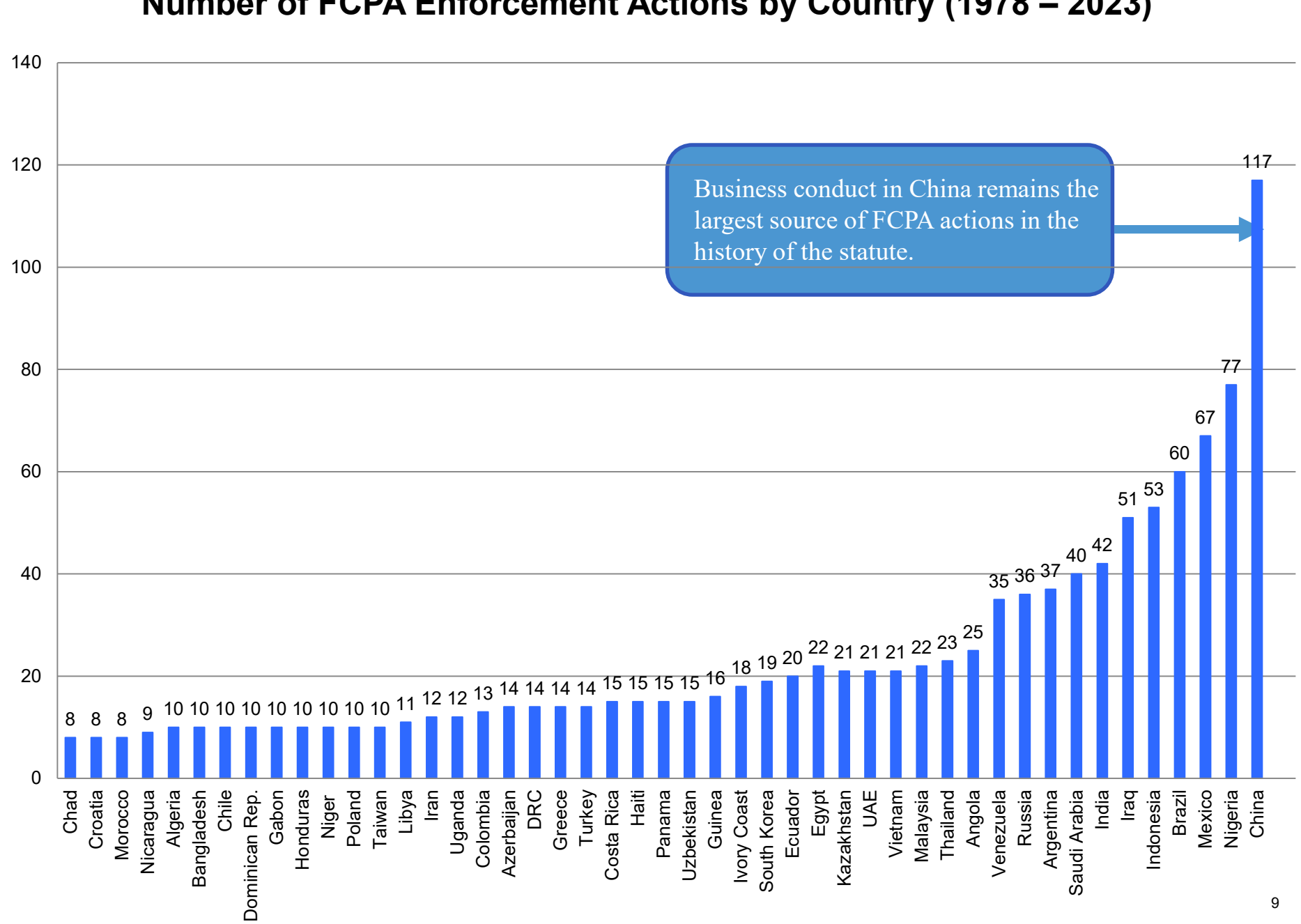
FCPA Enforcement Actions (2014 – 2023)



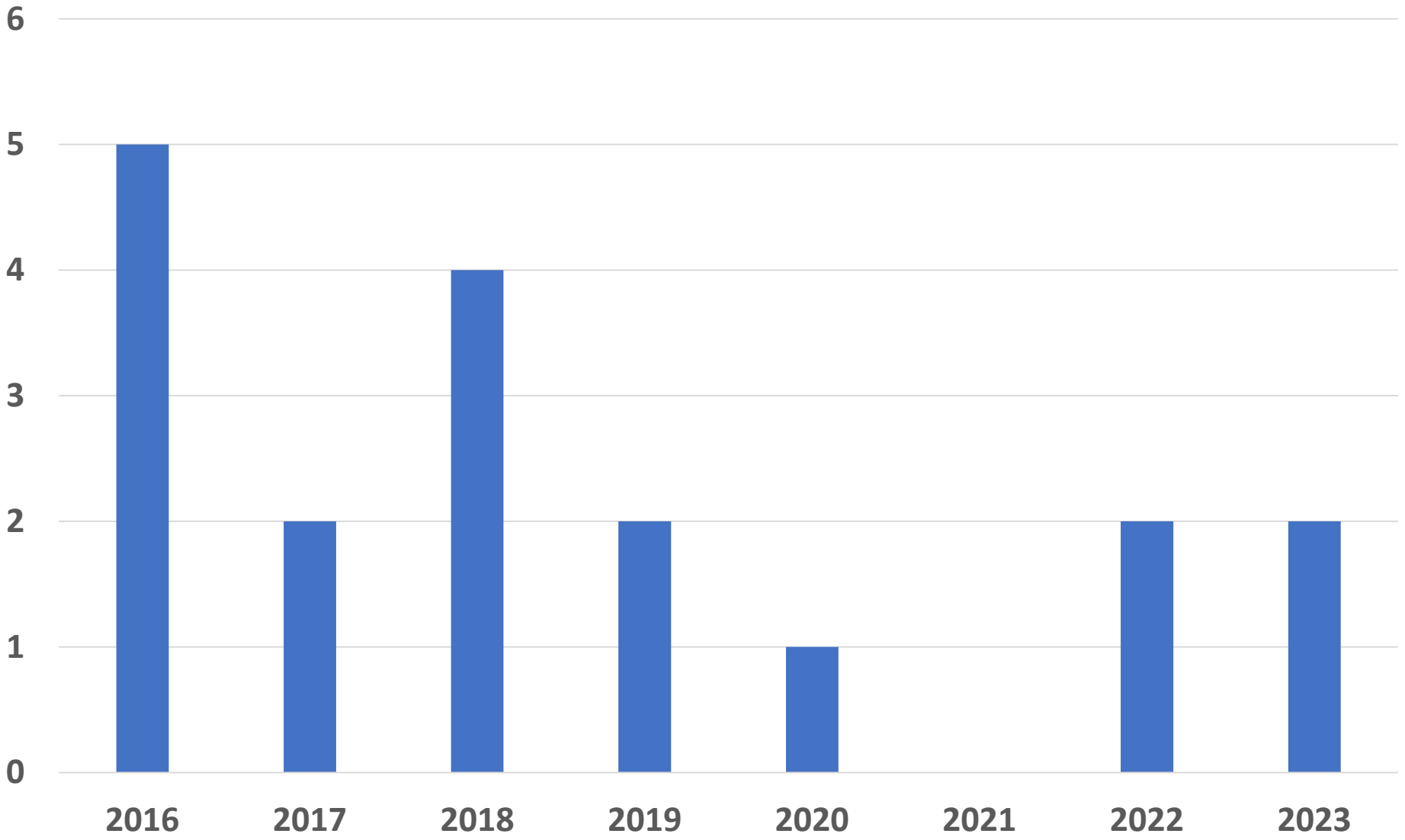
FCPA + FCPA-Related Enforcement Actions (2014 – 2023)



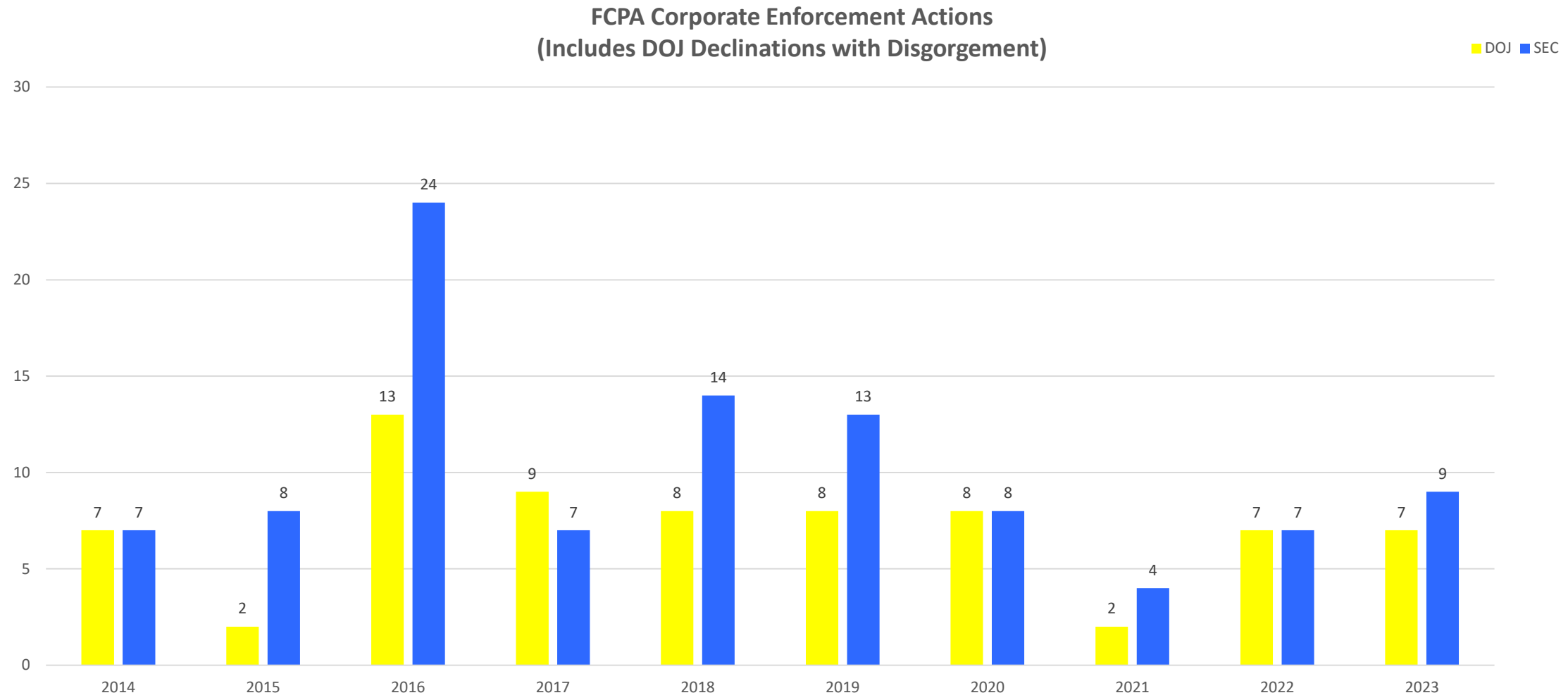
Situs of FCPA Corporate Enforcement Actions (1978 – 2023)



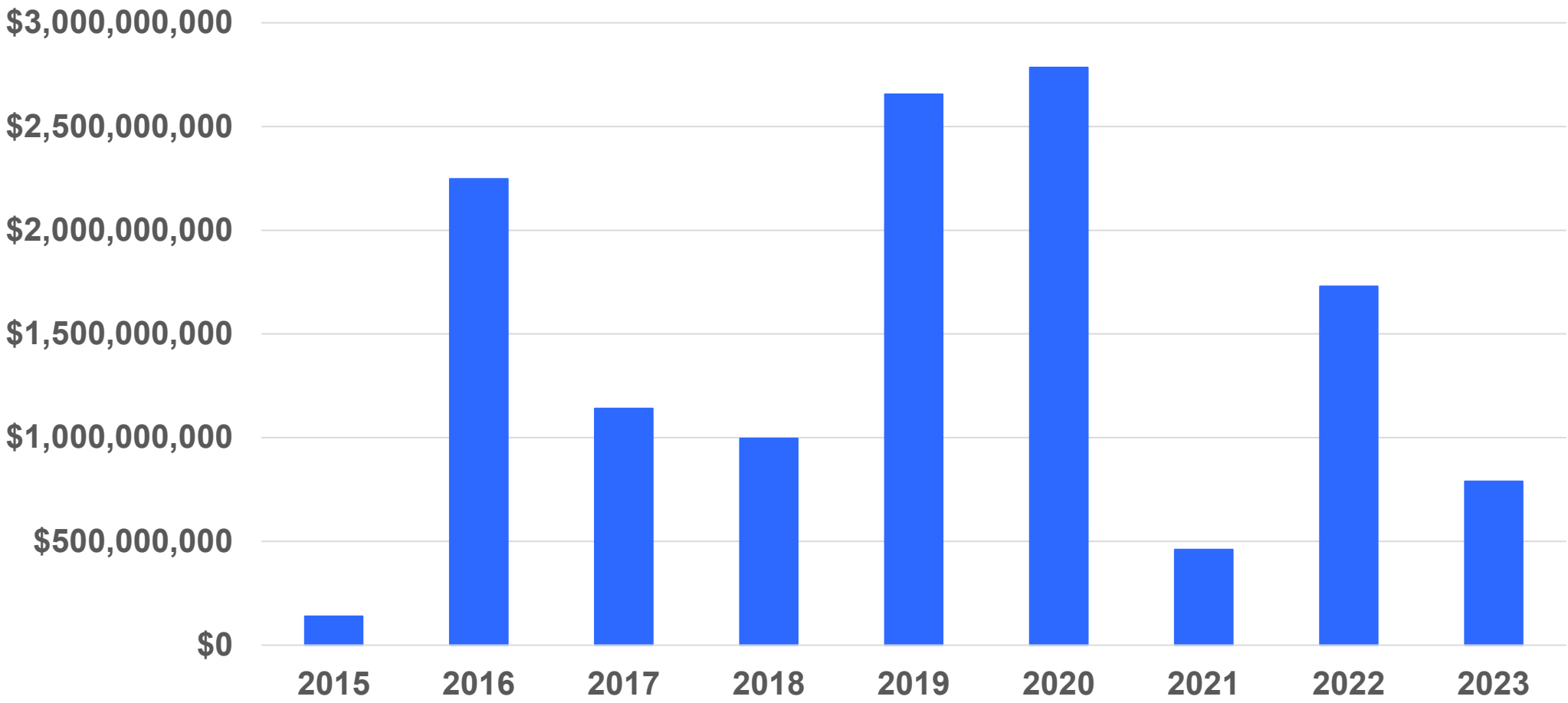
Corporate Enforcement Policy
FCPA Declinations With Disgorgement (2016 – 2023)



FCPA Corporate Enforcement Actions (2014 – 2023)



Total Fines in FCPA Corporate Enforcement Actions (2015 – 2023)



Top 10 FCPA Corporate Enforcement Actions

No.	Company*	Total Resolution	DOJ Component	SEC Component	Date
1	Goldman Sachs	$1,663,088,000	$1,263,088,000	$400,000,000	10/22/2020
2	Ericsson	$1,060,570,432	$520,650,432	$539,920,000	12/06/2019
3	Mobile TeleSystems	$850,000,000	$750,000,000	$100,000,000	03/06/2019
4	Siemens AG	$800,000,000	$450,000,000	$350,000,000	12/15/2008
5	Alstom S.A.	$772,290,000	$772,290,000	--	12/22/2014
6	Glencore	$700,706,965	$700,706,965	--	05/24/2022
7	KBR/Halliburton	$579,000,000	$402,000,000	$177,000,000	02/11/2009
8	Teva	$519,000,000	$283,000,000	$236,000,000	12/22/2016
9	Telia	$483,103,972	$274,603,972	$208,500,000	09/21/2017
10	Och-Ziff	$412,000,000	$213,000,000	$199,000,000	09/29/2016

2023 FCPA Legal and Guidance Updates

02

Legislative Development: Foreign Extortion Prevention Act

Congress Passes New Law Criminalizing Demand-Side of Foreign Bribery

- On December 14, 2023, the U.S. Congress passed the annual National Defense Authorization Act, including the new ***Foreign Extortion Prevention Act*** ("FEPA").
- FEPA amends the federal domestic bribery statute (18 U.S.C. § 201) to prohibit "any ***foreign official*** or person selected to be a foreign official to ***corruptly demand, seek, receive, accept, or agree to accept, directly or indirectly, anything of value***" from any covered person under the FCPA in exchange for "being influenced in the performance of any official act," "being induced to do or omit to do any act in violation" of their duties, or "conferring any improper advantage" "in connection with obtaining or retaining business."
- FEPA defines "***foreign official***" more broadly than the FCPA. The term applies to ***persons acting in an official or unofficial capacity*** for or on behalf of a foreign government, department, agency, instrumentality, or public international organization, and also includes persons selected but not yet formally installed as foreign officials.
- Foreign officials that violate this provision face ***civil and criminal penalties***, with fines up to "USD 250,000 or 3 times the monetary equivalent of the thing of value" and imprisonment "for not more than 15 years."
- FEPA offenses are subject to extraterritorial federal jurisdiction.
- FEPA requires DOJ to submit an annual report to Congress detailing the prevalence of offenses covered by the statute.

FCPA Opinion Letter 23-01

Compliance Reminders for Sponsoring Foreign Official Travel

- On August 14, 2023, DOJ issued an Opinion Procedure involving a requestor that was a U.S.-based adoption service provider organizing travel for foreign officials from a country requiring its officials to visit certain families that have adopted children from the country to ensure the success of the adoption. The requestor represented that the officials would be chosen by the government agency, that the requestor had no non-routine business before the government agency, that travel and recreation costs would be limited and paid directly to the providers rather than paid by providing cash or stipends to the officials, and that the requestor would not host spouses or other family members of the officials.
- DOJ concluded that the proposed expenses **"reflect no corrupt intent of the Requestor"** and appear to be **"reasonable and bona fide expenses"** with a **legitimate business purpose**.
- Although there are certain limiting circumstances underlying this opinion procedure release—namely, that the travel is required by the foreign country's law and the requestor had no other business before the relevant government agency—DOJ's analysis is instructive of the following best practices for companies considering sponsoring travel for foreign officials under other circumstances:
    - Excluding spouses and family members;
    - Ensuring that costs are reasonable and consistent with internal policies; and
    - Making payments directly to providers remains appropriate.

FCPA Opinion Letter 23-02

Stipends Are Allowable but Must Be Reasonable

- On October 25, 2023, DOJ issued another Opinion Procedure. The requestor was a company in the business of providing training events and logistical support, which had been awarded a contract with a U.S. government agency to support training events that included foreign government officials. Among other things, the requestor was required to provide stipend payments to the foreign officials for meals and transportation.
- The requestor represented that it was not made aware of the identities of the foreign officials at the time it bid for the contract, and they took various steps to mitigate potential anti-corruption risks, including:
  - Making the stipend payments through a U.S. government official;
  - Calculating the stipends in accordance with U.S. Department of State guidelines in limited amounts of between $8 and $40 per day depending on the location;
  - Maintaining accounting records documenting the payments; and
  - The U.S. agency responsible for this project confirmed that the stipends were authorized by the Foreign Assistance Act of 1961.
- In approving the payments, DOJ first reasoned that the facts and circumstances as represented by the requestor **"reflect[ed] no corrupt intent"** and **were authorized by U.S. law.** Secondly, DOJ explained that **"the payments themselves do not appear to be for the purpose of assisting" the requestor in obtaining and retaining business**.

DOJ Corporate Enforcement Policy Updates

- On January 17, 2023, then-Criminal Division Assistant Attorney General Kenneth A. Polite, Jr. issued an updated **Criminal Division Corporate Enforcement & Voluntary Self-Disclosure Policy** outlining new requirements for companies to receive credit for cooperation, disclosure, and remediation in investigations.
  - **Increased maximum credits** for companies that cooperate, remediate, and/or voluntarily disclose.
  - **Enhanced guidance on the point within the Sentencing Guidelines range from which credit is applied** for cooperating, non-cooperating, and recidivist companies.
  - **Expanded from FCPA Unit to full Criminal Division** (and in February 2023 materially the same guidance was issued to all 93 U.S. Attorney's Offices around the country).

DOJ Corporate Enforcement Policy Updates

- If a company **voluntarily self-discloses, fully cooperates, and appropriately remediates**:
  - **Presumption of declination (with disgorgement)**, if there are no aggravating circumstances; or
  - **In the event of prosecution, DOJ will recommend up to a 75% reduction** of the USSG fine (vs. 50% under prior version) and will generally not require a monitor.
  - Since 2016, there have been 18 publicized FCPA declinations under this policy, with two of those in 2023.
- If a company **fully cooperates and appropriately remediates, but does not voluntarily self-disclose:**
  - **DOJ will recommend up to a 50% reduction off the USSG fine (vs. 25% under prior version).**
- Point from which the credit is applied within the USSG range:
  - Middle of range or higher for recidivists or those that do not cooperate; and
  - Bottom of range for non-recidivist companies that cooperate.

Corporate Compliance Program Evaluations

- In March 2023, DOJ issued a series of updates to its guidance related to corporate compliance programs, including revisions to the **Evaluation of Corporate Compliance Programs,** the **Revised Memorandum on Selection of Monitors in Criminal Division Matters**, and **The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks.**
- Two key takeaways from the latest suite of updates are DOJ's continued emphasis on:
  - **Clawback or recoupment of compensation from employees responsible for misconduct, directly or through lack of supervision, in appropriate cases**; and
  - Appropriate **compliance policies and procedures related to the use of personal devices and communication platforms**, including ephemeral messaging applications.
    - **Key Questions:** Does a company have a policy covering the various communications methods, and is the company enforcing it?
- Although not legal requirements, these are standards against which companies will be evaluated in the context of a DOJ investigation.

2023 Updated Evaluation of Corporate Compliance Programs Guidance

- **2023 Evaluation of Corporate Compliance Programs Guidance** provides prosecutors a set of factors they should consider while evaluating the compliance programs of companies facing a criminal resolution, which companies can use to benchmark their own compliance programs.
  - Companies should develop and maintain a **positive compliance culture by establishing incentives for compliance and disincentives for compliance** failures.
    - Prosecutors are directed to consider whether the compliance program appropriately "identif[ies], investigate[s], discipline[s], and remediate[s] violations of law, regulation, or policy," taking into consideration whether there is **transparent communication regarding disciplinary processes** and actions and **tracking of data on disciplinary actions** to monitor the effectiveness of the compliance program.
  - Companies should have **compensation schemes that foster a positive compliance culture** and reduce the financial burden on shareholders and investors when misconduct results in monetary consequences.
    - Prosecutors are directed to consider **compensation incentives for compliance**, attempted **compensation clawbacks** for corporate misconduct, and incorporating compliance into **career advancement opportunities.**

2023 Compensation Pilot Program

- **The Pilot Program:** Promoting Compliance through Compensation Clawbacks is a three-year initiative applicable to all corporate Criminal Division matters requiring that corporate resolutions **require defendant companies to implement compliance-promoting criteria in its compensation and bonus systems and to report to the Criminal Division annually** about their implementation of this requirement.
    - Prohibition on bonuses for employees who do not satisfy compliance performance requirements;
    - Disciplinary measures for employees who violate applicable law and those who (a) had supervisory authority over the employee(s) or business area engaged in the misconduct, *and* (b) knew of, or were willfully blind to, the misconduct; and
    - Incentives for employees who demonstrate full commitment to compliance processes.
- The Pilot Program also recognizes that **a company may receive a deferred reduction in fines** if it has in good faith initiated a process to **recoup compensation from individual wrongdoers** before the resolution.
    - The Program provides dollar for dollar credit for funds actually recovered; and
    - The Program also provides, at the discretion of prosecutors, for reduction of up to 25% of the amount of compensation the company sought in good faith, but failed to recover.

DOJ's New M&A Safe Harbor Policy

Companies will receive the "presumption of a declination" if they "**promptly and voluntarily disclose criminal misconduct… cooperate** with the ensuing investigation, and engage in requisite, timely and appropriate **remediation, restitution, and disgorgement**."

Assistant Attorney General Lisa O. Monaco's Remarks as Prepared for Delivery at the Society of Corporate Compliance and Ethics' 22nd Annual Compliance & Ethics Institute

(October 4, 2023)

"We are placing an enhanced premium on timely compliance-related due diligence and integration. Compliance must have a prominent seat at the deal table if an acquiring company wishes to effectively de-risk a transaction…By contrast, if your company does not perform effective due diligence or self-disclose misconduct at an acquired entity, it will be subject to full successor liability for that misconduct under the law."

"To ensure predictability, we are setting ***clear timelines***."

1. "As a baseline matter, to qualify for the Safe Harbor, ***companies must disclose misconduct*** discovered at the acquired entity ***within six months from the date of closing***. That applies whether the misconduct was discovered pre- or post-acquisition."
2. "Companies will then have a baseline of ***one year from the date of closing*** to ***fully remediate*** the misconduct."
3. "Unless aggravating factors exist at the acquired company, th[e] ***entity can also qualify for applicable VSD benefits***, including potentially a declination."

"[A]ny ***misconduct disclosed*** under the Safe Harbor Policy will ***not be factored into future recidivist analysis*** for the acquiring company."

"[T]his policy will only apply to criminal conduct discovered in bona fide, arms-length M&A transactions."

Source: https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-announces-new-safe-harbor-policy-voluntary-self

Updates to Attachment C Form

Commitment to Compliance

1. The Company will ensure that its directors and senior management provide strong, explicit, and visible support and commitment to compliance with its corporate policy against violations of the anti-corruption laws, its compliance policies, and its Code of Conduct, and demonstrate rigorous support for compliance principles via their actions and words.

2. The Company will ensure that mid-level management throughout its organization reinforce leadership's commitment to compliance policies and principles and encourage employees to abide by them. The Company will create and foster a culture of ethics and compliance with the law in their day-to-day operations at all levels of the Company.

Updates to Attachment C Form

Training and Guidance

10. The Company will implement mechanisms designed to ensure that its Code of Conduct and anti-corruption compliance policies and procedures are effectively communicated to all directors, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, sales, legal, compliance, finance), or positions that otherwise pose a corruption risk to the Company, and, where necessary and appropriate, agents and business partners; and (b) metrics for measuring knowledge retention and effectiveness of the training. The Company will conduct training in a manner tailored to the audience's size, sophistication, or subject matter expertise and, where appropriate, will discuss prior compliance incidents.

11. The Company will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners, on complying with the Company's anti-corruption compliance policies and procedures, including when they need advice on an urgent basis or in any foreign jurisdiction in which the Company operates.

Updates to Attachment C Form

Compensation Structures and Consequence Management

14. The Company will implement clear mechanisms to incentivize behavior amongst all directors, officers, employees, and, where necessary and appropriate, parties acting on behalf of the Company that comply with its corporate policy against violations of the anti-corruption laws, its compliance policies, and its Code of Conduct. These incentives shall include, but shall not be limited to, the implementation of criteria related to compliance in the Company's compensation and bonus system.

Updates to Attachment C Form

Third-Party Management

17. The Company will understand and record the business rationale for using a third party in a transaction, and will conduct adequate due diligence with respect to the risks posed by a third-party partner such as a third-party partner's reputations and relationships, if any, with foreign officials. The Company will ensure that contract terms with third parties specifically describe the services to be performed, that the third party is actually performing the described work, and that its compensation is commensurate with the work being provided in that industry and geographical region. The Company will engage in ongoing monitoring and risk management of third-party relationships through updated due diligence, training, audits, and/or annual compliance certifications by the third party.

Updates to Attachment C Form

Mergers and Acquisitions

19. The Company will develop and implement policies and procedures for mergers and acquisitions requiring that the Company conduct appropriate risk-based due diligence on

20. The Company will ensure that the Company's Code of Conduct and compliance policies and procedures regarding the anti-corruption laws apply as quickly as is practicable to newly acquired businesses or entities merged with the Company and will promptly:

a. train the directors, officers, employees, agents, and business partners consistent with Paragraph 10 above on the anti-corruption laws and the Company's compliance policies and procedures regarding anti-corruption laws;

b. where warranted, conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable;

c. where warranted, establish a plan to integrate the acquired businesses or entities into the Company's enterprise resource planning systems as quickly as practicable.

Updates to Attachment C Form

Monitoring and Testing

22. The Company will conduct periodic reviews and testing of all elements of its compliance program to evaluate and improve their effectiveness in preventing and detecting violations of anti-corruption laws and the Company's Code of Conduct and anti-corruption compliance policies and procedures, taking into account relevant developments in the field and evolving international and industry standards.

23. The Company will ensure that compliance and control personnel have sufficient direct or indirect access to relevant sources of data to allow for timely and effective monitoring and/or testing of transactions.

Updates to Attachment C Form

Analysis and Remediation of Misconduct

24. The Company will conduct a root cause analysis of misconduct, including prior misconduct, to identify any systemic issues and/or any control failures. The Company will timely and appropriately remediate the root causes of misconduct. The Company will ensure that root causes, including systemic issues and controls failures, and relevant remediation are shared with management as appropriate.

2023 FCPA Enforcement Actions and Key Observations

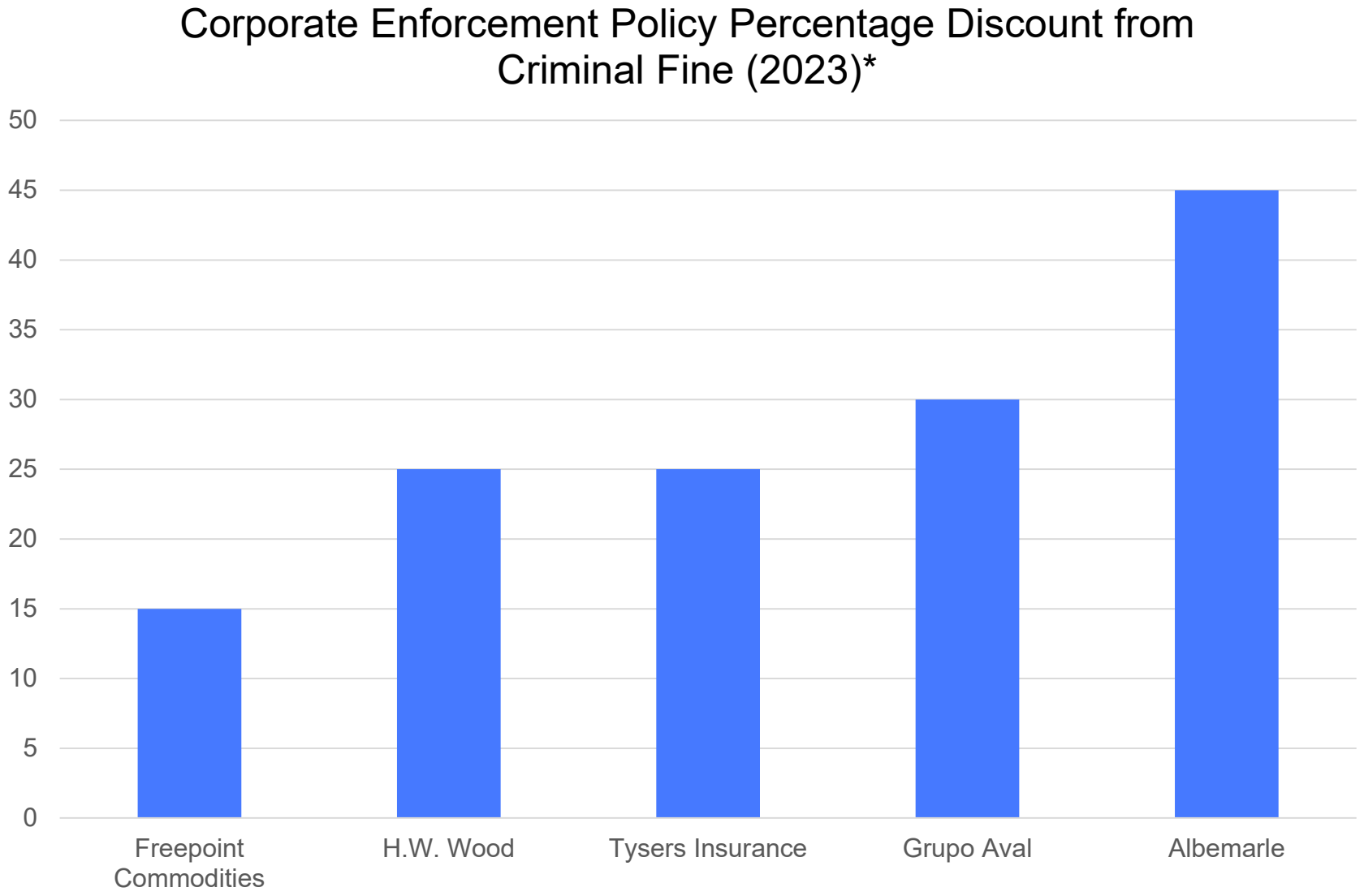
03

2023 FCPA Key Observations

For 2023, we have identified **six notable observations from the year in FCPA enforcement**, though whether they represent longer-term trends, or only single-year aberrations, varies by the observation in question and may require additional time to determine:

1. Tracking early returns in DOJ Corporate Enforcement Policy discounts
2. DOJ's new forfeiture practice continues
3. A year of DOJ deferred and non-prosecution agreements
4. No new monitorships in 2023
5. The FCPA's dual enforcers largely go it alone
6. LATAM continued to dominate FCPA enforcement actions

2023 Key Observation #1: Tracking DOJ CEP Discounts



*All discounts taken from the bottom of the U.S. Sentencing Guidelines Range.

2023 Key Observation #2: DOJ's new forfeiture practice continues

As you will have seen in these and other cases, including the Glencore case from 2022, we are requiring in such cases that, in addition to paying any required criminal penalty, companies must pay appropriate forfeiture. Of course, when entering into a resolution with the department, issuers subject to the SEC's oversight have historically also resolved in parallel with that agency, forfeiting their ill-gotten gains. We typically have credited this disgorgement against any applicable criminal forfeiture.

Acting Assistant Attorney General Nicole M. Argentieri's Keynote Address at the 40th International Conference on the Foreign Corrupt Practice Act (November 29, 2023)

Freepoint Commodities Deferred Prosecution Agreement

Forfeiture

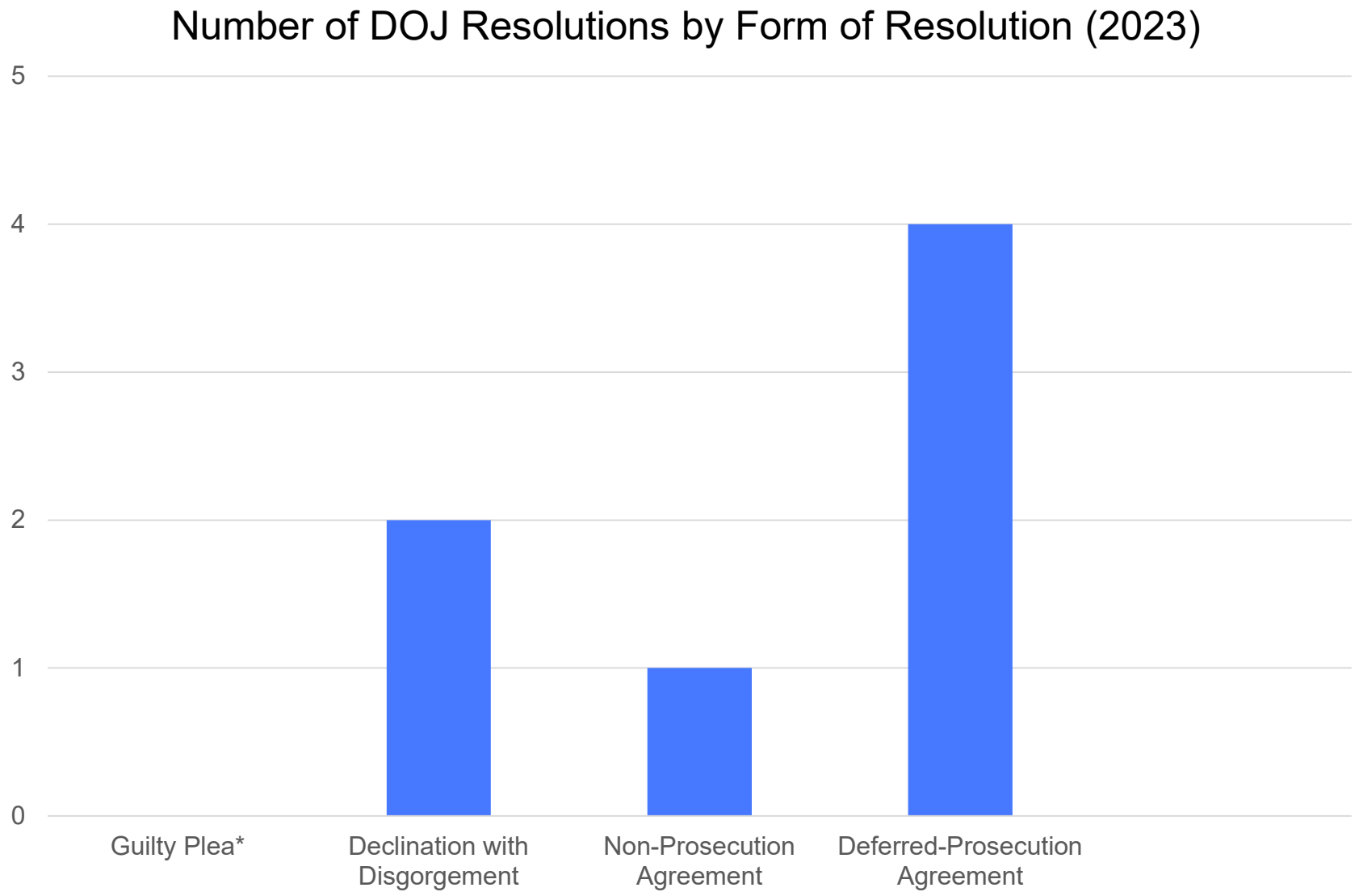
10. As a result of the Company's conduct, including the conduct set forth in the attached Statement of Facts, the parties agree that the Fraud Section and the Office could institute a civil and/or criminal forfeiture action against certain funds held by the Company and that such funds would be forfeitable pursuant to Title 18, United States Code, Section 981(a)(1)(C) and 982(a)(2) and Title 28, United States Code, Section 2461(c). The Company hereby admits that the facts set forth in the Statement of Facts establish that at least $30,551,150, representing the proceeds traceable to the commission of the offense, is forfeitable to the United States (the "Forfeiture Amount"). The Company releases any and all claims it may have to the Forfeiture Amount, agrees that the forfeiture of such funds may be accomplished either administratively or judicially at the Fraud Section's and the Office's election, and waives the requirements of any applicable laws, rules or regulations governing the forfeiture of assets, including notice of the forfeiture. If the Fraud Section and the Office seek to forfeit the Forfeiture Amount judicially or

Tysers Insurance Brokers Ltd. Deferred Prosecution Agreement

Forfeiture

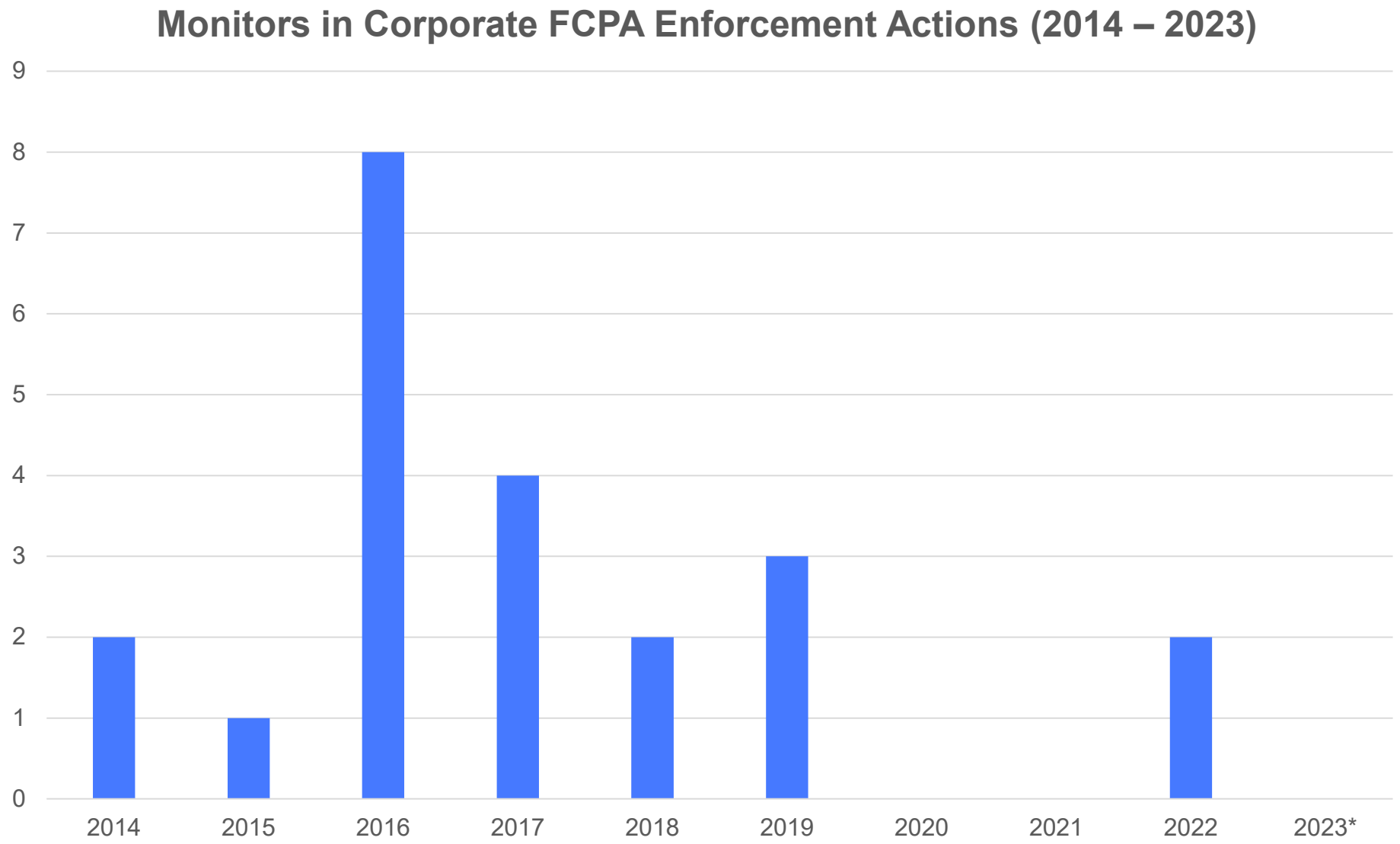
9. As a result of the Company's conduct, including the conduct set forth in the attached Statement of Facts, the parties agree the Fraud Section could institute a civil and/or criminal forfeiture action against certain funds held by the Company and that such funds would be forfeitable pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2) and Title 28, United States Code, Section 2461(c). The Company hereby admits that the facts set forth in the Statement of Facts establish that at least $10,589,275, representing the proceeds traceable to the commission of the offense, is forfeitable to the United States (the "Forfeiture Amount"). The Company releases any and all claims it may have to the Forfeiture Amount, agrees that the forfeiture of such funds may be accomplished either administratively or judicially at the Fraud Section's election, and waives the requirements of any applicable laws, rules or regulations governing the forfeiture of assets, including notice of the forfeiture. If the Fraud

2023 Key Observation #3: Prominence of Non- and Deferred-Prosecution Agreements



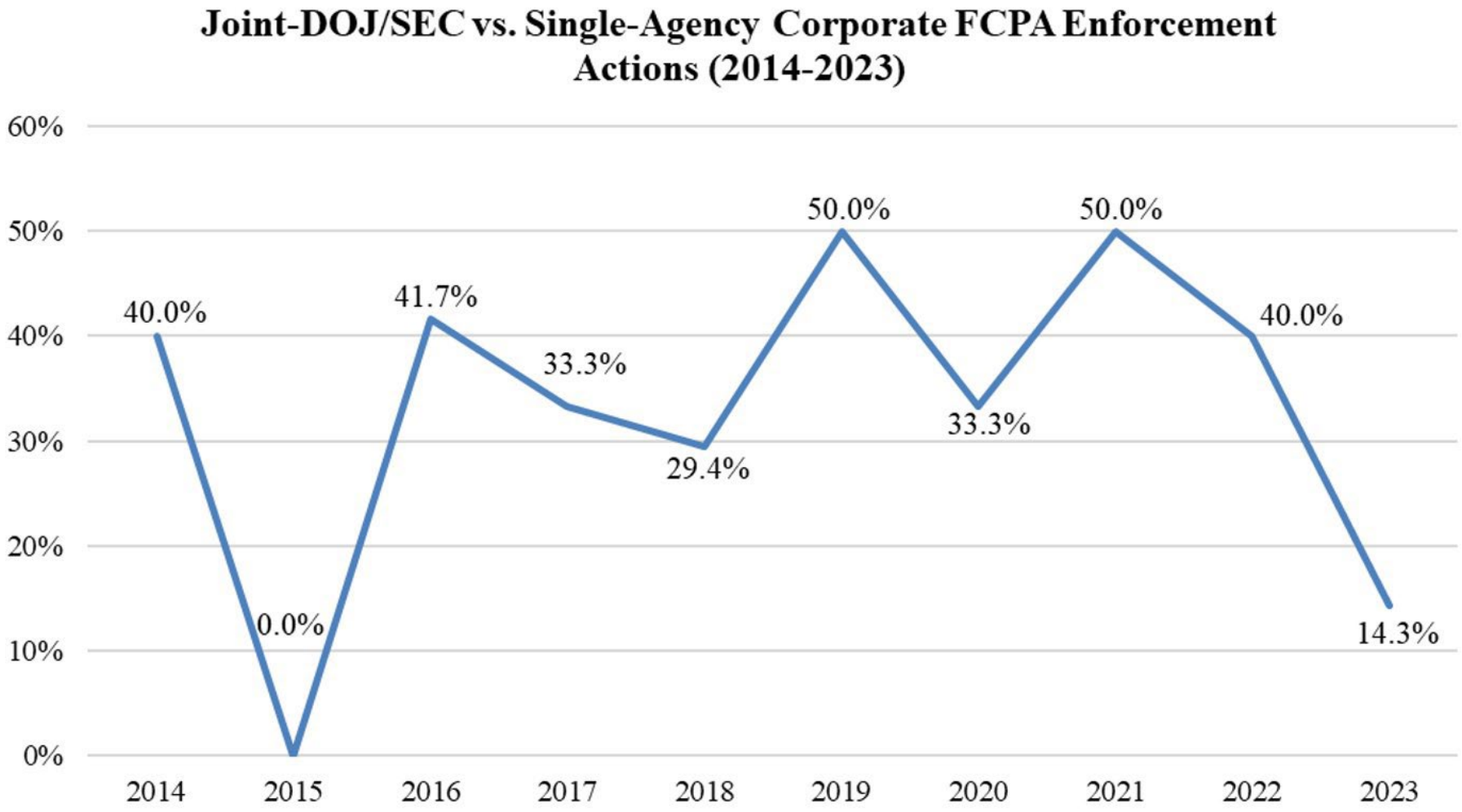
*On March 2, 2023, DOJ determined that Ericsson had breached its 2019 FCPA Deferred Prosecution Agreement and Ericsson pleaded guilty in connection with the 2019 case.

2023 Key Observation #4: No New* Monitorships in 2023

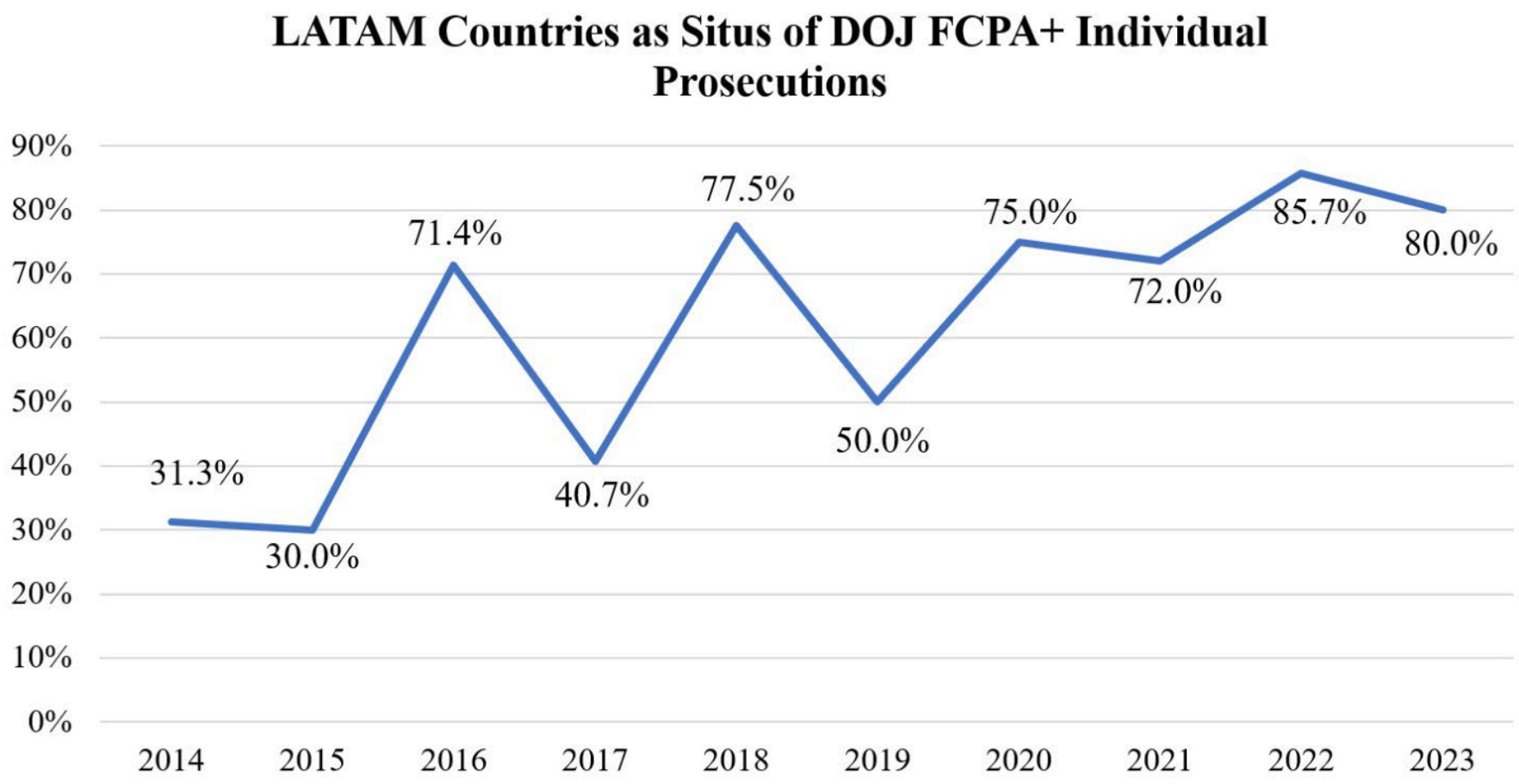


*Although there were no new monitorships imposed in 2023, the monitorship from Ericsson's 2019 DPA was extended a year as part of the company's 2023 guilty plea.

2023 Key Observation #5: The FCPA's Dual Enforcers Largely Go It Alone



2023 Key Observation #6: LATAM's Continued Presence in FCPA Enforcement Actions



Joint Resolution Involving Issuer and Non-Issuer

- In August 2023, Corficolombiana, a Colombian financial services institution, reached a joint resolution with **DOJ and SEC** to resolve FCPA bribery and accounting allegations associated with a minority-owned joint venture. Corficolombiana was majority-owned and controlled by Grupo Aval, a Colombian holding company and U.S. issuer. The SEC resolution was with Grupo Aval **and** Corficolombiana.
- Corficolombiana was a minority participant (33%) in a joint venture, Concesionaria Ruta del Sol S.A.S. ("CRDS"), created to bid on construction projects in Colombia. CRDS was majority-owned by Brazilian conglomerate, **Odebrecht S.A.** There was also another minority participant in the joint venture.
- According to the resolution documents, Corficolombiana executives conspired with Odebrecht executives to make corrupt payments to Colombian officials to obtain work for Corficolombiana. The Odebrecht executives allegedly informed a Corficolombiana executive of the agreement, and between 2012 and 2015, they caused Corficolombiana to make over $23 million in corrupt payments to the officials, **using sham invoices and contracts**.

DOJ Resolution Details	
Resolution Type	3-year DPA
Fine	$40,600,000, with up to half credited for amounts paid in a related Colombian resolution provided the company drops a pending appeal of that resolution.
Discount	30% off bottom of USSG range
Forfeiture	$28,630,000, fully credited for SEC disgorgement
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

SEC Resolution Details	
Resolution Type	Cease-and-desist Order against Grupo Aval and Corficolombiana
Penalty	None
Disgorgement	$32,139,731 plus $8,129,558 in prejudgment interest
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

30% Discount from Bottom of USSG Range

- Corficolombiana received cooperation and remediation credit, but did not voluntarily disclose. DOJ applied a 30% discount off the bottom of the applicable Sentencing Guidelines.

Cooperation Efforts

- Timely providing facts from internal investigation
- Making multiple factual presentations of internal investigation findings
- Produced documents that the DOJ may not have had access to due to foreign data privacy laws
- Provided translations of documents
- Provided sworn testimony from proceedings in Colombia of witnesses DOJ could not interview
- Proactively identified information previously unknown to DOJ

Remedial Efforts

- Conducted a root cause analysis
- Enhanced corporate governance, controls, and oversight of JVs and investments
- Increased Compliance independence and resources
- Enhanced third-party intermediary risk management processes
- Implemented reporting and investigation procedures
- Established disciplinary procedures overseen by cross-functional ethics committee
- Conducted anti-corruption program testing
- Periodically reviewing and updating anti-corruption compliance program through regular risk assessments, culture reviews, and compliance audits

Establishing U.S. Nexus

- Per the resolution documents, Corficolombiana acted as an agent of U.S. issuer Grupo Aval and caused Grupo Aval's violations.

- The resolution documents only explicitly refer to one activity occurring within the United States, which involved a $2.7 million transaction through a U.S. correspondent bank, a portion of which was ultimately used to make one of the corrupt payments.

> 15. The Corficolombiana Executive caused the RDS 2 Joint Venture to pay approximately $28 million in bribes to Colombian government officials from 2014 through 2016 for the Ocaña-Gamarra Extension. Specifically, the Brazilian construction company paid approximately $4 million in 2014; the RDS 2 concession company paid approximately $13.2 million from 2014 through 2016 (approximately $2.7 million through a correspondent bank located in the United States), and the RDS 2 construction company paid approximately $10.9 million from 2014 through 2016.

Non-Prosecution Agreement for Multi-Country Conduct

- On September 29, 2023, **DOJ and the SEC** announced a joint FCPA resolution with North Carolina-based specialty chemicals manufacturer Albemarle to resolve DOJ allegations of conspiracy to violate the **anti-bribery provision** and SEC allegations of FCPA **bribery, books and records, and internal controls violations**.
- The resolution documents allege that Albemarle conspired to make millions of dollars in corrupt payments to government officials **in India, Indonesia, and Vietnam between 2009 and 2017** to obtain business from state-owned entities in those countries, including by structuring tender requirements to favor Albemarle, providing confidential information about competitors, and to keep the company from being blacklisted.
- The SEC extended its allegations to contend Albemarle also made improper payments to executives at **private entities in India** and **failed to maintain complete and accurate records relating to third parties in China and the UAE**.

DOJ Resolution Details	
Resolution Type	3-year NPA
Fine	$98,236,547
Fine Discount	45% off bottom of USSG range
Forfeiture	$98,511,669, credited $81,856,863 for SEC disgorgement
Monitor	No
Self-Disclosure	No (under CEP)
Cooperation	Yes
Remediation	Yes

SEC Resolution Details	
Resolution Type	Cease-and-Desist Order
Penalty	None
Disgorgement	$81,856,863 plus $21,761,447 in prejudgment interest
Monitor	No
Self-Disclosure	Yes
Cooperation	Yes
Remediation	Yes

No Voluntary Disclosure Credit?

- Although Albemarle self-disclosed the matter before DOJ was aware of the conduct, DOJ did not award voluntary disclosure credit under DOJ's Corporate Enforcement Policy because it contended the **disclosure was not "reasonably prompt."** However, DOJ said the self-disclosure factored into "the appropriate form of the resolution" and the discount provided.
- Albemarle reportedly disclosed to DOJ **~16 months after learning** of the potential misconduct and **~9 months after confirming evidence** of the potential misconduct following an internal investigation.

> (b) the Company voluntarily disclosed to the Offices conduct that forms the basis for this Agreement; however, the disclosure was not "reasonably prompt" as defined in the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy and the U.S. Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 8C2.5(g)(1). The Company learned of allegations regarding possible misconduct in Vietnam approximately 16 months before disclosing to the Offices. After an internal investigation, the Company gathered evidence demonstrating the potential misconduct at least approximately nine months prior to the disclosure. The Company took remedial action and continued to investigate other potential issues. In January 2018, the Company disclosed to the Fraud Section misconduct relating to four separate geographies, including Vietnam. Hence, the disclosure was not within a reasonably prompt time after becoming aware of the misconduct in Vietnam. Although the Company did not meet the standard for voluntary self-disclosure under the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, the Offices gave significant weight, in evaluating the appropriate disposition of this matter—including the appropriate form of the resolution and the reduction for cooperation and remediation—to the Company's voluntary, even if untimely, disclosure of the misconduct;

45% Discount Per CEP, Plus Additional Discount Under 2023 Compensation Pilot Program

- DOJ applied a **45% discount from the bottom** of the Sentencing Guidelines Range for Albemarle's cooperation and remediation efforts.
- Albemarle also received a $763,453 discount under the **Criminal Division's March 2023 Compensation Incentives and Clawbacks Pilot Program** for having withheld the same amount in bonuses from implicated employees.

> (f) the Company withheld bonuses totaling $763,453 during the course of its internal investigation from employees who engaged in suspected wrongdoing in connection with the conduct under investigation, or who both (a) had supervisory authority over the employee(s) or business area engaged in the misconduct and (b) knew of, or were willfully blind to, the misconduct, qualifying the Company for an additional fine reduction in the amount of the withheld bonuses under the Criminal Division's March 2023 Compensation Incentives and Clawbacks Pilot Program ("Pilot Program");

> 3. Accordingly, after considering (a) through (k) in paragraph 2 above, the Offices have determined that the appropriate resolution of this case is a non-prosecution agreement with the Company; payment by the Company in the amount of a $98,236,547 criminal monetary penalty, which reflects a discount of 45 percent off the bottom of the otherwise-applicable U.S. Sentencing Guidelines fine range and an additional discount of $763,453 under the Pilot Program, and $98,511,669 in forfeiture, which, as described below in paragraph 10, will be credited, in large part, against disgorgement of ill-gotten profits that the Company pays to the SEC in a concurrent resolution.

Highlighted Cooperation Measures

- DOJ highlighted how Albemarle **proactively provided factual updates that enabled DOJ to preserve and collect evidence**.
- DOJ also prominently highlighted Albemarle's self-disclosure (even if, allegedly, untimely per the CEP).

> criminal conduct; the Company also received credit for its substantial cooperation and extensive and timely remediation pursuant to Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy, by, among other things: (i) voluntarily disclosing the conduct that forms the basis for this Agreement before it came to the attention of the Offices; (ii) promptly providing information obtained through its internal investigation, which allowed the government to preserve and obtain evidence as part of its own extensive independent investigation; (iii) making regular and detailed presentations to the Offices; (iv) proactively identifying information previously unknown to the Offices; (v) meeting the Offices' requests promptly; (vi) voluntarily making foreign-based employees available for interviews in the United States; (vii) collecting and producing voluminous relevant documents and translations to the Offices, including documents located outside the United States; and (viii) producing documents to the Offices from foreign countries in ways that did not implicate foreign data privacy laws;

Extensive Remedial Measures

- DOJ highlighted the transformation of Albemarle's third-party sales program, including the termination of hundreds of external sales representatives.
- DOJ also prominently highlighted Albemarle's withholding of bonuses from implicated employees.

(e) the Company also received credit pursuant to the Criminal Division Corporate Enforcement and Voluntary Self-Disclosure Policy because it engaged in extensive and timely remedial measures, including: (i) commencing remedial measures based on its internal investigation of the misconduct prior to the commencement of the Offices' investigation; (ii) disciplining employees involved in the misconduct, including terminating eleven employees and withholding bonuses from sixteen employees; (iii) strengthening its anti-corruption compliance program by investing in compliance resources, expanding its compliance function with experienced and qualified personnel, and taking steps to embed compliance and ethical values at all levels of its business organization; (iv) transforming its business model and risk management process to reduce corruption risk in its operation and to embed compliance in the business, including implementing a go-to-market strategy that resulted in eliminating the use of sales agents throughout the Company, terminating hundreds of other third-party sales representatives, such as distributors and resellers, and shifting to a direct sales business model; (v) providing extensive training to its sales team and restructuring compensation and incentives so that compensation is no longer tied to sales amounts; (vi) using data analytics to monitor and measure its compliance program's effectiveness; and (vii) engaging in continuous testing, monitoring and improvement of all aspects of its compliance program beginning almost immediately following the identification of misconduct.

Third-Party Agent Use of Increased Commissions to Pay Bribes Highlighted in DOJ Resolution

21. Albemarle corruptly obtained contracts at two state-owned oil refineries in Vietnam through the use of an intermediary sales agent who requested increased commissions to pay bribes to PetroVietnam and refinery officials and to structure tender requirements to favor Albemarle. . . .

34. After increasing Vietnam Intermediary Company's commission rate from 4.25 percent to 6.5 percent, in or around 2015 and 2016, Albemarle also increased commissions it paid to Vietnam Intermediary Company by expanding the scope of products with which Vietnam Intermediary Company assisted. For example, on or about January 25, 2016, Albemarle Vietnam Sales Representative sent an email to Vietnam Intermediary, copying Albemarle Sales Director, regarding "BSR – Lon[g]term Contract opportunity," proposing a way to pay more to Vietnam Intermediary that would ostensibly not run afoul of compliance requirements and would avoid additional reviews and approvals by adjusting aspects of freight forwarding costs. . . .

52. Days later, on or about February 6, 2013, Indonesia Intermediary Company asked Albemarle to increase its commission from four percent to ten percent so Indonesia Intermediary Company could pay bribes to Pertamina officials. The request was made during a meeting at Albemarle's Singapore office and was attended by, among others, a close relative of Pertamina Official, who purportedly was a director of Indonesia Intermediary Company.

SEC Focus on Internal Audit Findings

- SEC highlighted that Albemarle's Internal Audit function reportedly identified gaps in the company's internal account controls for third-party intermediaries over the course of multiple years.
- Albemarle purportedly did not implement all of Internal Audit's recommendations regarding third-party intermediaries.

> 7. A series of internal audit reports in 2013, 2015, and 2016 identified multiple gaps in Albemarle's internal accounting controls with respect to the Refining Solutions business's use of intermediaries. For example, sales agents and distributors were paid: despite incomplete due diligence; despite a lack of an executed contract; despite having a contract that lacked required anti-corruption provisions; and at rates higher than those provided for by contract – all in contravention of Albemarle's policies and procedures.
>
> 8. The audit team for the 2013 internal audit recommended that Albemarle establish a comprehensive program to manage and monitor the entire life cycle for intermediaries. While Albemarle hired compliance personnel, reduced the number of sales agents and distributors without contracts, and implemented software to assist in third-party onboarding and contracting, it failed to devise and maintain a sufficient system of internal accounting controls with respect to commission rates and deviations from contracted rates. As a result, sales personnel were able to increase agents' commission rates in multiple countries – including Vietnam, India, China, and UAE – despite certain Albemarle personnel having knowledge of red flags indicating the agents would use a portion of the commission to make bribe payments to obtain contracts, influence tender specifications, or obtain nonpublic information concerning competitors' bids.

Payments and Performance Outside of Third-Party Contract Terms Highlighted in SEC Resolution

Albemarle

9. Other examples of internal accounting controls deficiencies during the relevant period include the payment of sales agents in Vietnam, India, Indonesia, China, and the UAE despite a lack of contractually required reports from the agents describing the services provided. In some instances, Albemarle Subsidiaries also entered backdated agreements with the sales agents and reimbursed vague, unsupported, and extra-contractual expenses. Certain personnel also instructed sales agents to omit detail from their invoices or to re-submit the invoices to a different Albemarle Subsidiary to avoid a lengthy approval process.

...

19. Although India Agent's agreement required it to cover all expenses associated with contract performance, it submitted more than $100,000 in vague and unsupported "Business Development Expenses" and "HPC division Expenses" to Albemarle Netherlands. An Albemarle Subsidiary regional sales manager directed India Agent to resubmit its invoices through Albemarle Middle East, which would pay the invoices "without any lengthy authorization."

...

32. In addition to commissions that Albemarle paid to UAE Agent (and, through it, UAE Consultant), Albemarle paid UAE Agent undefined "administrative charges" equal to ten percent of its invoices for customs clearance and other non-sales services. These undocumented charges fell outside the scope of Albemarle's agreement with UAE Agent. Albemarle's system of internal accounting controls provided inadequate assurances that payments to UAE Agent were used for legitimate services. Moreover, Albemarle Netherlands and Albemarle Middle East, whose books and records were consolidated into Albemarle's financial statements, lacked support for payments to UAE Agent that were recorded as legitimate commissions and business expenses.

FCPA Declinations With Disgorgement

Corsa Coal Corporation (Mar. 2023)

On March 8, 2023, DOJ announced a declination with disgorgement with U.S. coal mining company Corsa Coal.

DOJ alleged that from 2016 to 2020, Corsa employees and agents coordinated bribes to Egyptian government officials to obtain and retain contracts to supply coal to Egyptian state-owned company Al Nasr Company for Coke and Chemicals.

DOJ declined to prosecute **based on Corsa's timely voluntary disclosure, full and proactive cooperation and agreement to continue cooperating with ongoing actions, remediation, and agreement to disgorge**, which due to inability to pay was $1.2 million, reduced from $32.7 million.

Lifecore Biomedical, Inc. (Nov. 2023)

On November 16, 2023, DOJ announced a declination with disgorgement with Lifecore Biomedical based on allegations that from 2018 to 2019, a former Lifecore subsidiary made corrupt payments to Mexican government officials to secure a wastewater discharge permit and avoid various wastewater discharge expenses. The alleged payments began prior to Lifecore acquiring the subsidiary, were affirmatively hidden from Lifecore during due diligence, and were discovered during post-acquisition integration. **Lifecore reported the matter within three months of discovering the possible misconduct, and within hours of confirming it, which DOJ said was "reasonably prompt" as required for voluntary disclosure credit under the Corporate Enforcement Policy.**

Lifecore agreed to disgorge just over $400,000, which was based on costs to Mexican regulatory authorities that were avoided by the allegedly corrupt payments, with credit for paid remediation costs Lifecore already had paid after discovering the misconduct.

Deferred Prosecution Agreement and CFTC Resolution

- On December 14, 2023 **DOJ announced** a resolution with Connecticut-based commodities trading company Freepoint Commodities arising out of allegations that it paid bribes to secure business with Brazilian state-owned oil company, Petrobras.
- DOJ alleged that between 2012 and 2018, Freepoint made nearly $4 million in corrupt payments to Petrobras officials in exchange for confidential information about pricing and bids submitted to Petrobras by Freepoint's competitors.
- As seen in several other 2023 resolutions, **the alleged corrupt payments were made from third-party commissions and "profit sharing" payments** and disguised by "sham" invoices.
- Freepoint also entered into a civil resolution **with the CFTC** to settle misappropriation-based fraud charges based on the same underlying conduct. This is the third coordinated DOJ and CFTC resolution involving FCPA violations, following resolutions with Vitol and Glencore.
  - In 2019, the CFTC published an advisory on self-reporting and cooperation for "violations involving foreign corrupt practices" and announced its intent to bring enforcement actions stemming from foreign bribery.

DOJ Resolution Details	
Resolution Type	3-year DPA
Fine	$68 million, with provisional credit up to $22.4 million for as-yet unannounced resolution with Brazilian authorities.
Discount	15% off bottom of USSG range
Forfeiture	$30.5 million, credited up to $7,637,788 for CFTC disgorgement.
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

CFTC Resolution Details	
Resolution Type	Order
Fine	$61 million, fully credited by DOJ fine.
Disgorgement	$30,551,150, credited up to $22,913,362 for DOJ forfeiture.
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

Cooperation Credit

- DOJ said Freepoint received cooperation credit but noted that its cooperation was "limited in degree and impact" during initial phases.
- DOJ did not explicitly refer to this as resulting in partial cooperation credit, but only applied a 15% discount from the bottom of the guideline range, far lower than other 2023 resolutions involving cooperation and remediation credit. Freepoint did not receive voluntary self-disclosure credit.

> c. the Company received credit for its cooperation with the Fraud Section and the Office's investigation pursuant to U.S.S.G. § 8C2.5(g)(2) because it cooperated with their investigation and demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct; the Company also received credit for its cooperation pursuant to the Criminal Division's Corporate Enforcement and Voluntary Self-Disclosure Policy. Such cooperation included, among other things: (i) promptly and thoroughly responding to requests by the Fraud Section and the Office by producing and summarizing relevant documents and other information; (ii) engaging in significant efforts to aggregate and analyze complex financial information and trade data for more than 4,000 transactions; and (iii) making Company officers and employees available for interviews, and arranging separate counsel where appropriate. However, in the initial phases, the Company's cooperation was limited in degree and impact, and largely reactive;

Deferred Prosecution Agreements in Reinsurance Industry

- On November 20, 2023, DOJ announced separate but related resolutions with UK reinsurance brokers **H.W. Wood** and **Tysers Insurance** based on FCPA conspiracy charges. DOJ alleged that each company paid millions of dollars to an intermediary between 2013 and 2017 while knowing the intermediary would bribe Ecuadorian government officials to secure insurance and reinsurance business with state-owned insurance companies Seguros Sucre S.A. and Seguros Rocafuerte S.A.
- Some of the alleged bribe payments went through accounts at financial institutions in the United States, and conspirators met in person and exchanged text messages about the scheme while in the United States.
- An entity that acquired Tysers Insurance in September 2022 also agreed to the terms and conditions of the DPA, though it was not a named defendant.

Tysers Insurance Brokers DOJ Resolution Details	
Resolution Type	3-year DPA
Fine	$36 million
Discount	25% off bottom of USSG range
Forfeiture	$10,589,275
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

H.W. Wood DOJ Resolution Details	
Resolution Type	3-year DPA
Fine	$22,500,000 reduced to $508,000 based on inability to pay
Discount	25% off bottom
Forfeiture	$2,338,735, waived due to inability to pay
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

Inability to Pay Analysis

- DOJ reduced H.W. Wood's $22.5 million fine to $508,000 **based on an inability to pay**. DOJ also recognized that H.W. Wood could not pay the $2,338,735 disgorgement.
  - A forensic accounting expert conducted an independent analysis of H.W. Wood's ability to pay using **DOJ's Inability to Pay Guidance that looks at various factors**, including the company's financial condition and alternative sources of capital and found that a fine over $508,000 would threaten the Company's continued viability.

SEC-Only Resolution Related to Third-Party Consultants in Russia

- On March 6, 2023, Irish sports betting and gaming Flutter Entertainment resolved an **SEC-only** FCPA enforcement action with a $4 million civil penalty arising out of alleged conduct in Russia by U.S. issuer Stars Group, which Flutter acquired in 2020.
- The SEC alleged that Stars Group paid nearly $9 million to **Russian consultants between 2015 and 2020** in an ultimately unsuccessful effort to legalize online poker in the country.
- SEC alleged books and records and internal accounting violations associated with the company's **failure to conduct due diligence on the consultants and consultancy payments** without adequate proof of services.
- The SEC made no allegations of actual bribery.

Flutter

SEC Resolution Details	
Resolution Type	Cease-and-Desist Order
Penalty	$4 million
Disgorgement	None
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

Cooperation Efforts

- Sharing facts from internal investigation and forensic accounting reviews
- Providing translated copies of various documents and relevant witness statements
- Encouraging parties outside of Commission's subpoena power to provide evidence and information

Remedial Efforts

- Enhanced internal accounting controls
- Enhanced global compliance organization
- Enhanced policies and procedures regarding due diligence and use of third parties
- Enhanced recordkeeping
- Terminated relationship with consultants
- Withdrew from Russian market following Russia's invasion of Ukraine

The Importance of Requiring Documentation

- The SEC highlighted numerous examples of the company allegedly not obtaining proper documentation to support third-party payments.

> 12. Even after the Company executed new contracts with the Russian Consultants in 2017 that included anti-bribery and anti-corruption provisions, the Company failed to effectively enforce them. For example, while the Russian Consultant contracts required that each consultant submit monthly invoices containing details of the services they provided, as well as any relevant backup or supporting documents, this information was not provided or included on the invoices, which contained only general statements including "consulting services" or "legal services" without any further detail. Additionally, while the contracts required that the Russian Consultants submit monthly reports detailing their activities, such reports were neither submitted to nor requested by the Company. . . .

> 15. In particular, with respect to Consultant C, from 2015 to 2018, the Company made payments totaling approximately $461,000 for expense reimbursements that lacked documentation and that the Company therefore could not substantively review. These payments included the following:
>
> . . .
>
> b. In 2016, the Company made two separate payments totaling approximately $22,000 to Consultant C as reimbursement for expenses described in supporting e-mails alternatively as payments "regarding Roskomnadzor" or "to cover [Consultant C's] payment to Roskomnadzor" or "to cover [Consultant C's] second payment to RSKM"[2] – While these descriptions refer to "payments" to a Russian government agency, no receipt or other proof of payment to RSKM was provided. Moreover, the Company inaccurately recorded payments to Consultant C as "Lobbying Fees / Rent – Offices."
>
> c. From March 2017 to January 2018, the Company made six payments totaling approximately $139,000 to Consultant C as lobbying fees or costs, without any supporting documentation. Contemporaneous emails indicate that some funds were to reimburse Consultant C for New Year's gifts to individuals including Russian government officials, which relevant Company policies prohibited.

The Importance of Compliance With Internal Policies

- The SEC repeatedly highlighted how the company allegedly failed to comply with its own compliance policies in connection with its third-party consultants.

> 11. Throughout the Relevant Period, the Company failed to adhere to internal policies requiring that the Company maintain written contracts with its consultants. The Company did not have a written contract with Consultant C until late 2017 despite Consultant C's retention years earlier. While existing contracts were in place between the Company and Consultants A and B prior to 2017, such contracts were perfunctory documents and did not include anti-bribery and anti-corruption provisions or safeguards despite internal requirements that all third-party agents and consultants adhere to applicable Company policies. . .

> 15. In particular, with respect to Consultant C, from 2015 to 2018, the Company made payments totaling approximately $461,000 for expense reimbursements that lacked documentation and that the Company therefore could not substantively review. These payments included the following: . . .

> 20. Despite the aforementioned red flags and lack of diligence, the Company in January 2015 signed a services contract with Consulting Company A. That contract, which was never counter-signed, did not contain any anticorruption provisions, in violation of relevant Company policies.

The Importance of Third-Party Due Diligence and Monitoring

- The SEC repeatedly highlighted how the company allegedly failed to conduct due diligence on, and then monitor, its third-party consultants.

19. Nevertheless, the Company did almost no due diligence regarding Consulting Company A, only performing a public records database search for Consulting Company A, and taking no steps to investigate its principals or ultimate beneficial owner.

21. Following the retention of Consulting Company A, the Company performed little to no follow-up or monitoring of the relationship. The only documentation submitted by Consulting Company A to justify its payments were monthly invoices, perfunctory documents containing no detail about any services provided by Consulting Company A or related expenses it may have incurred. No one reviewing or approving those payments checked to ensure that Consulting Company A was in fact providing services to the Company.

Misconduct Involving Subsidiaries

- In September 2023, the **SEC** announced a resolution with Clear Channel Outdoor Holdings Inc. ("CCOH") to resolve **books and records, accounting controls, and bribery charges associated with conduct by a former indirect, majority-owned Chinese subsidiary**, Clear Media Limited.
- According to the SEC order, from 2012 through 2017, Clear Media made improper payments, **directly and through third parties, to Chinese government officials** to obtain concession contracts required to sell ad services. The payments were allegedly facilitated through "sham" invoices and third-party agreements.
- CCOH agreed to a $6 million civil monetary penalty, $16,355,567 in disgorgement, and $3,760,920 in prejudgment interest.

SEC Resolution Details	
Resolution Type	Cease-and-Desist Order
Penalty	$6 million
Disgorgement	$16,355,567 plus prejudgment interest of $3,760,920
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

Cooperation Efforts

- Sharing facts from internal investigation
- Proactively producing relevant documents, including overseas records Producing, in real time, audit records
- Providing translations of documents
- Facilitating productions from third parties
- Facilitating SEC's interviews of current and former employees of CCOH's foreign subsidiaries and certain third parties

Remedial Efforts

- Disposing of interest in Clear Media
- Enhancing anti-corruption compliance policies, procedures, and internal accounting controls, and implementing annual compliance reviews of internal accounting controls
- Increasing compliance resources
- Implementing compliance considerations in compensation and performance evaluations
- Enhancing anti-corruption training

Importance of Timely Remediation

- Government authorities routinely request Internal Audit reports and may use them to support charges if findings are not timely or completely remediated.

19. From 2012 through 2017, CCOH's internal auditors repeatedly reported elevated bribery risks at Clear Media and concerns regarding Clear Media's compliance program and internal accounting controls, including in relation to cleaning and maintenance vendors; travel, gifts, and entertainment; compliance training; and whistleblower hotline implementation. While CCOH audit reports identified certain remedial actions to be taken by Clear Media, CCOH failed to ensure that Clear Media took adequate steps to sufficiently address these repeated concerns. In some cases, CCOH's internal auditors erroneously reported that audit issues were remediated based on information provided by Clear Media, only to note the same issues in later audits; failed to elevate certain concerns they identified at Clear Media; and failed to adequately test high-risk transactions to detect long-running payment schemes.

33. To remediate these issues, Clear Media engaged an accounting firm ("**Accounting Firm**") to review its internal control over financial reporting. Accounting Firm's September 2018 recommendations were similar to those CCOH's internal auditors had made from 2012 to 2017 regarding Clear Media's governance of supplier management, conflicts of interest, related party transactions, employee expense claims, and whistleblowing. Accounting Firm's recommendations also addressed Clear Media's "customer development" expenses and internal audit function.

Problematic “Discounts”

- On May 11, 2023, **SEC** announced a resolution with Koninklijke Philips N.V., to resolve **books and records and internal controls allegations** in connection with its sales of medical diagnostic equipment in China. The resolution entailed a $15 million fine, $41,126,170 in disgorgement, and $6,047,633 in prejudgment interest.

- According to SEC’s order, between 2014 and 2019, the company’s subsidiaries in China (collectively, “Philips China”) violated the FCPA’s books and records and internal controls provisions by providing **special price discounts** to distributors, improperly influencing hospital officials to tailor specifications in public tenders to favor the company’s products, and engaging in improper bidding conduct. SEC alleged that the special discounts to distributors created a risk that excessive distributor margins *could* lead to improper payments to employees of government-owned hospitals. SEC also faulted the company for having **internal accounting controls that were insufficient to prevent and detect the misconduct**.

- This was Phillips’s **second FCPA resolution**. In 2013, Philips agreed to pay SEC $4.5 million for FCPA books and records and internal controls offenses in its Poland subsidiary for “similar misconduct.”

SEC Resolution Details	
Resolution Type	Cease-and-Desist Order
Penalty	$15 million
Disgorgement	$41,126,170 plus prejudgment interest of $6,047,633
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

Cooperation Efforts

- Regularly sharing facts from internal investigation, including facts previously unknown to the staff
- Voluntarily provided translations of key documents

Remedial Efforts

- Structural improvements to policies and procedures
- Improving tone at the top and the middle
- Increased accountability for enforcing compliance policies by business leaders
- Terminating or disciplining employees
- Terminating relationships with distributors
- Improved internal accounting controls relating to distributors, bidding practices, and use of discounts and special pricing
- Revised compliance training

Undertakings Imposed by the SEC

- This is the only FCPA resolution in which the SEC imposed compliance enhancement and certification undertakings.

22. Report to the Commission staff periodically during a two-year term, on the status of its ongoing remediation and implementation of compliance measures. The reports will focus particularly on due diligence on prospective and existing third-party consultants and vendors, FCPA training, and the testing of relevant controls, including the collection and analysis of compliance data. During this period, if Respondent discovers credible evidence, not already reported to Commission staff, that corrupt payments or corrupt transfers of value to a foreign official may have been offered, promised, paid, or authorized by Respondent, or any entity or person while acting on behalf of Respondent, or that related false books and records have been maintained, Respondent shall promptly report such conduct to the Commission staff. During this two-year period, Respondent shall: (1) conduct an initial review and submit an initial report and (2) conduct and prepare a follow-up review and report, as described below:

23. Certify in writing compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be

Importance of Profit Margin Policies and Controls

12. During the relevant period, Philips China's use of special price discounts with distributors created the risk that excessive distributor margins could be used to fund improper payments to employees of government-owned hospitals. Philips China maintained inadequate books, records, and accounts concerning special price discounts, as the discounts were unsupported by adequate documentation to ensure their business justification and management's approval of them. The company's books and records also contained certain inaccurate documents relating to the special price discounts. The special price discounts granted by Philips China were consolidated into Philips' books and records. In addition, Philips did not devise and maintain an adequate system of internal accounting controls with respect to the approval process and recording of the special pricing discounts to provide reasonable assurances of appropriate management authorization of the discounts. This deficiency, combined with pressure to win additional sales, created an environment in which there was a risk that excessive distributor margins could be used to fund improper payments to employees of government-owned hospitals.

SEC-Only Resolution Involving Third Party in Angola

- On April 26, 2023, the **SEC** announced a resolution with Frank's International, a Dutch-incorporated oilfield services provider, to resolve FCPA allegations in Angola.
- SEC alleged that Frank's International **retained and paid substantial commissions to an agent while allegedly knowing the agent had close relationships with officials of Angola's state-owned oil company Sonangol and further that the agent did not have any relevant technical expertise**. SEC asserted that Frank's International did not perform any due diligence on the agent and only created a backdated agreement long after engaging the agent.
- Without admitting or denying SEC's allegations, Frank's International agreed to pay a $3 million penalty, plus nearly $5 million in disgorgement and prejudgment interest.

SEC Resolution Details	
Resolution Type	Cease-and-Desist Order
Penalty	$3 million
Disgorgement	$4,176,858 plus prejudgment interest of $821,863
Monitor	No
Self-Disclosure	Yes
Cooperation	Yes
Remediation	Yes

Cooperation Efforts

- Bringing overseas witnesses to the United States for interviews
- Voluntarily producing relevant documents
- Sharing facts from internal investigation, including facts relating to conduct that occurred before Franks became an issuer

Remedial Efforts

- Terminating involved employees
- Terminating relationship with third-party agent
- Improving internal accounting controls
- Further enhancements to internal controls environment and compliance program following a subsequent merger

Dated Conduct, Much of Which Predated IPO

- The SEC's allegations were based on conduct that took place in January 2008 through October 2014. Frank's IPO was in August 2013.

> 11. In November 2007, without conducting due diligence and without a contract in place, the company retained Angola Agent, who had known the country manager for another Frank's subsidiary operating in Africa for more than two decades. Angola Agent did not have the relevant technical background to advocate on the company's behalf before Sonangol and, in fact, did not attend technical meetings with Sonangol. However, he had personal relationships with Angola Official and other Sonangol employees. Frank's retained Angola Agent despite the fact that employees based in the region were aware of the high probability that Angola Agent would use the payments he received from Frank's to bribe Angolan government officials. After hiring Angola Agent, the company's meetings with Sonangol went from short, unproductive meetings to successful gatherings with approximately 20 officials in attendance.

> 17. In October 2012, Frank's Angolan Operations and Angola Agent entered into a third agency agreement that granted Angola Agent a 2.75% commission for sales up to $40 million and 2.5% of sales exceeding that amount. The contract had an effective date of April 1, 2012, and after it was signed, Angola Agent began sending invoices that purported to compensate Angola Agent for "representation fees" owed from April through October 2012. Frank's employees based in the region continued to authorize payments to Angola Agent, despite being aware of the high probability that the funds would be used corruptly. Frank's recorded the payments as legitimate "commissions."

> 21. During the course of his representation between 2008 and 2014, Angola Agent's businesses received approximately $5.5 million from Frank's Angolan Operations, a portion of which was paid to Angola Official. Frank's received at least $4,176,858 in post-IPO net profits from its contracts with oil companies where Sonangol was the ultimate customer and for which Angola Official, or other Sonangol officials, possessed decision-making authority.

Risks Associated with Third Parties with Connections to Foreign Officials

- In March 2023, the **SEC** announced a resolution with Rio Tinto, a British-Australian metals and mining company, to resolve **FCPA books and records and internal controls allegations** relating to a purported scheme to make improper payments to a Guinean government official to retain mining rights in Guinea.

- According to the SEC, in 2011, **Rio Tinto hired a French investment banker who was close friends with a senior Guinean government official as a consultant** to help the company retain mining rights. Rio Tinto allegedly paid the consultant $7.5 million in July 2011, after learning that it would retain the mining rights, and placed another $3 million in an escrow account at a Swiss bank to be released after December 31, 2015, if Rio Tinto continued to retain the mining rights until then. The $3 million was ultimately released on February 25, 2016. The consultant attempted to pay a portion of the original payment to the Guinean official, but the bank blocked two attempts to make the payment.

- Rio Tinto agreed to pay a $15 million fine.

Rio Tinto

SEC Resolution Details	
Resolution Type	Cease-and-Desist Order
Penalty	$15 million
Disgorgement	None
Monitor	No
Self-Disclosure	No
Cooperation	Yes
Remediation	Yes

Cooperation Efforts

- Timely producing documents identified from internal investigation
- Making current and former employees available

Remedial Efforts

- Terminated involved employees
- Enhanced internal accounting controls
- Strengthened compliance organization and related policies and procedures
- Enhanced whistleblower program
- Improved monitoring systems and internal controls for payments and third parties
- Enhanced anti-corruption risk assessment and transaction testing
- Increased anti-corruption training

Importance of Third-Party Onboarding Controls and Contracts

Rio Tinto

- As highlighted in some of the other 2023 cases, the SEC noted that Rio Tinto hired the consultant despite a lack of relevant experience, no written contract until a day before payment, and a lack of due diligence.

> 7. In March 2011, while searching for an advisor to help the company retain its mining rights, Rio Tinto executives identified a French investment banker and former classmate of the Senior Government Official as a potential consultant. Email discussions amongst the company's senior executives highlighted the potential Consultant's history and ongoing friendship with the Senior Government Official as the main reasons for hiring him. At the time, the potential Consultant had no direct work experience relating to the mining business generally or in Guinea specifically.
>
> 8. The Rio Tinto Executive contacted the Consultant and confirmed his connection to the Senior Government Official at the time. Afterward, a lower level Rio Tinto employee ran a cursory background check on the Consultant, without any additional due diligence. The Consultant began working on behalf of Rio Tinto—purportedly representing the company's interests during discussions with the Government of Guinea and routinely reporting information back to the Rio Tinto Executive—before a written agreement was executed defining the scope of his employment, fees, or deliverables. No written agreement of any sort was in place for the majority of the Consultant's employment and a written contract was only executed one day before Rio Tinto paid the Consultant.

No Benefit, No Disgorgement

- Rio Tinto ultimately obtained no value from the mining rights.

> 16. Rio Tinto ultimately never developed blocks three and four of the Simandou region or extracted anything of value from them because, in part, declining iron ore prices made mining in the Simandou region economically not viable. The company capitalized the $700 million Settlement Agreement on the balance sheet as a prepayment for an intangible asset until 2014, when it was transferred into intangible assets for exploration, before being written off as an expense in 2015, so that it has zero current carrying value.

Self-Disclosure 7 Years Before Resolution

- Rio Tinto reportedly self-disclosed the matter in November 2016.

RioTinto

Media release

Rio Tinto contacts regulatory authorities

9 November 2016

On 29 August 2016, Rio Tinto became aware of email correspondence from 2011 relating to contractual payments totalling US$10.5 million made to a consultant providing advisory services on the Simandou project in Guinea.

The company launched an investigation into the matter led by external counsel. Based on the investigation to date, Rio Tinto has today notified the relevant authorities in the United Kingdom and United States and is in the process of contacting the Australian authorities.

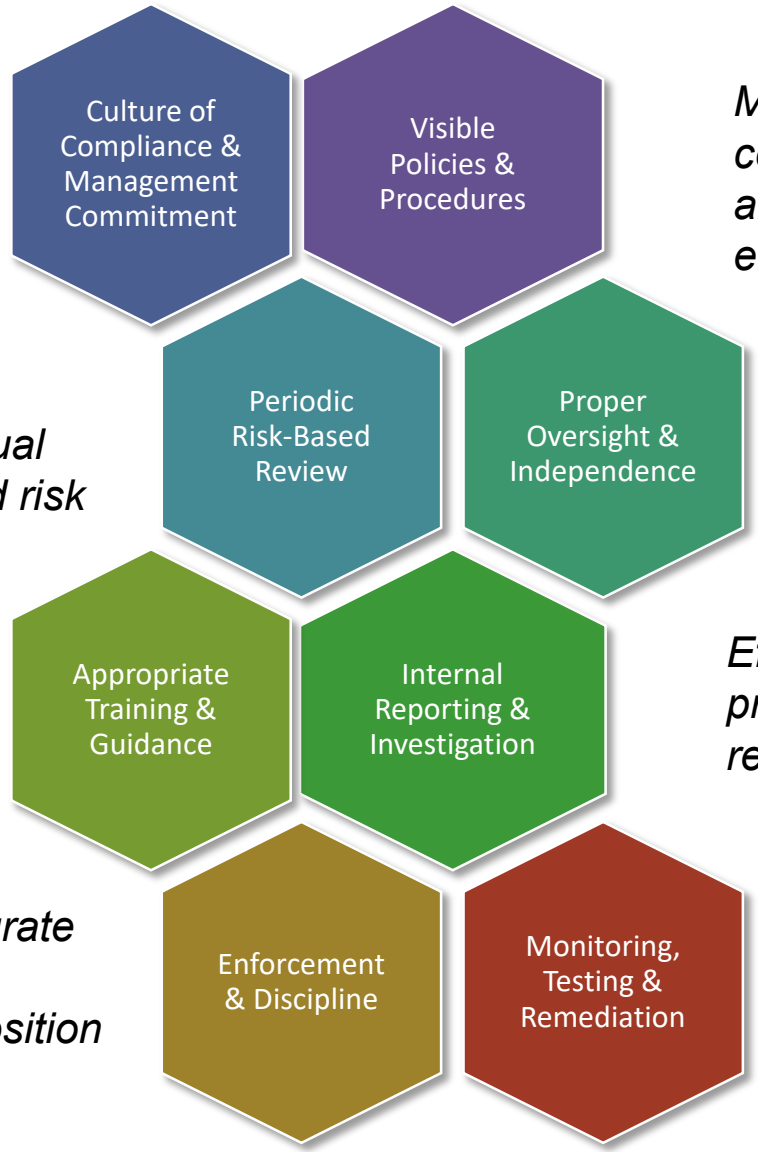
DOJ Corporate Enforcement Framework Updates and Compliance Program Best Practices

04

Compliance Programs

DOJ's Modified Attachment C

Stricter Expectations for the Corporate Compliance Program



Strong support and rigorous adherence, demonstrated by concrete examples

Memorialized in written compliance codes, which are the duty of all employees

Addressing the company's individual circumstances and risk profile

Assigned to senior executive(s) with adequate stature and autonomy

Periodic training and corresponding certifications, tailored to the audience

Effective and reliable processes, with sufficient resources available

Fair and commensurate with the violation, regardless of the position held

Emphasis on root-cause analysis and timely action

Well-Developed and Regularly Tested Risk-Based Compliance Programs

- In legislation, regulations, and enforcement decisions, authorities continue to increasingly emphasize the need for a **well-developed risk-based compliance program that is regularly tested, updated, and supported by sufficient resources.**
- Compliance programs should account for **global anti-corruption standards**, not just the FCPA.
- As recent U.S. enforcement actions show, **authorities will not credit companies for having internal controls if they are easily circumvented**. On the other hand, they have shown a willingness to credit the state of a compliance program after remediation following the discovery of misconduct.
- FCPA enforcement actions have also highlighted **the importance of Internal Audit and effective coordination between Internal Audit, Legal, and Compliance.**
  - Consider implementing best practices for a working relationship between internal audit, legal, and compliance.
  - Include compliance- and corruption-related areas in audit cycles.

Importance of Timely and Complete Remediation

- DOJ and SEC regularly request and review **audit reports and internal and independent assessments.**
    - Establish guidelines to keep reports strictly factual with precise wording.
    - Ensure that remedial steps are practical and workable, and there is a process to follow through on action items.
    - Have guidelines for when to involve Legal and properly label privileged and confidential documents.
- Recent enforcement actions, like CCOH, emphasize the need for companies to **fully address compliance red flags, risks, and recommendations flagged** by auditors, due diligence, complaints, and other creditable sources. Decisions to reject such findings or recommendations should be well-supported and fully documented.
- Government officials increasingly expect that compliance programs will be supported by **updated technology and automation**, with particular emphasis recently on the use of **data analytics for monitoring and testing a compliance program**.

Importance of Updated Risk Assessments

- Having a **properly developed risk assessment that is regularly updated is the backbone of an effective and efficient compliance program**.
- A **documented risk assessment procedure** should detail steps to review existing data, gather additional information, and analyze and report findings on a regular cadence.
    - **Sources of information should be broad across operations and jurisdictions.** They may include interviews, visits, surveys, due diligence files, audit reports, complaints, transaction data, compliance program testing and monitoring results.
    - However, more information may be sought for higher risk areas, in accordance with a risk-based approach.
- Compliance program policies, procedures, and controls should be designed and updated based on **risk assessment** findings.

Third Parties as Greatest FCPA Risk Factor

All 2023 FCPA resolutions involved corrupt payments made through third parties.

- **Third parties**—such as intermediaries, individuals and shell companies, agents, offshore entities, and distributors—**continue to pose the greatest FCPA risk** and feature in enforcement actions.
  - Higher-risk third parties include those interacting with government officials, distributors and resellers, and business development agents.
  - Other high-risk scenarios include: commission-based compensation; handling licensing, permits, or customs formalities; operating in jurisdictions at high risk for corruption; and engagement of subcontractors.
- **Pre-engagement diligence, compliance contract provisions, and close monitoring** can help offset the decreased transparency and control that comes with agents and intermediaries.
- Albemarle's resolution did not include the imposition of a monitor because, in part, the company **significantly reduced its use of third parties**.

Carefully Monitor High-Risk Third Parties

Use of third parties is an inevitable part of doing business in an emerging market. Pre-engagement screening, as well as close monitoring, can help offset the decreased transparency and control that comes with using agents and intermediaries.

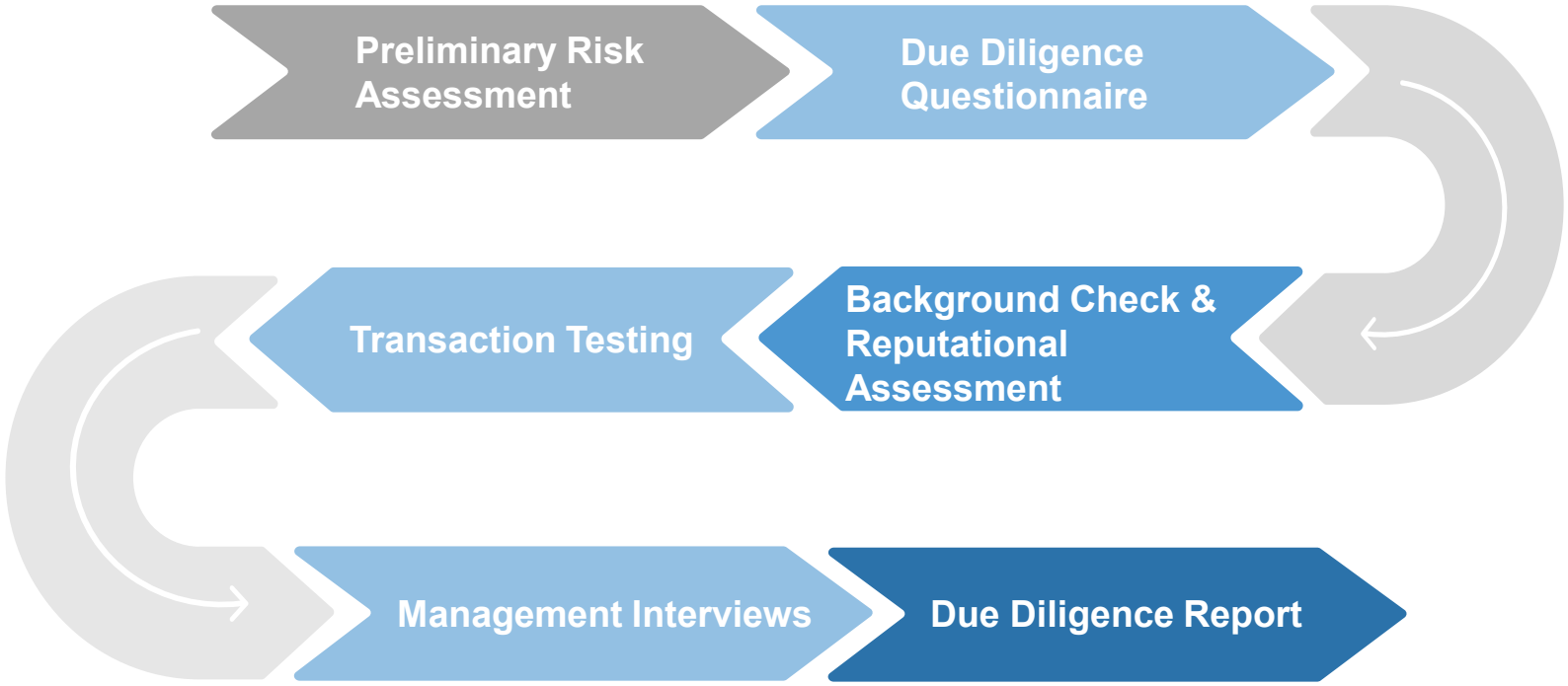
BEST PRACTICES

- Identify the specific functions ***prone to corruption*** that are handled by third parties.
- Involve ***Legal and Compliance*** in contract negotiations and drafting to ensure that services are specifically and accurately described.
- Establish an efficient control (e.g., Finance) that can assess whether the services have actually been rendered and whether prices are reasonable in light of those services and in line with market rates.
- Ensure that ***rebates, credit notes, and other payments*** provided to the third party are made to the contracting entity, including identifying any offshore arrangements.
- Understand whether discounts or profit margins of intermediaries are ***passed on*** to end-customers by reviewing publicly available tender materials or conducting audit reviews.
- Conduct ***function-specific training*** for employees working with third parties and with end customers.
- Include ***audit rights*** in third-party agreements.
- Use a risk-based approach to periodically select third parties for an ***audit review***.

Ensure Proactive Disclosure, Cooperation, and Remediation

- **After voluntary disclosure, ensure full cooperation, including:**
  - Sharing facts developed in the company's internal investigations;
  - Providing translations of key documents in foreign languages; and
  - Facilitating the authorities' requests to interview current and former employees in the U.S. and foreign subsidiaries.
- **Present extensive remediation plan and the actions taken up to date, including:**
  - Root-cause analysis of the misconduct;
  - Significant investments in compliance personnel, testing, and monitoring across the company; and
  - Enhanced compliance program designed, implemented, and enforced to detect effectively FCPA and other anti-corruption law violations.

Overview of M&A Compliance Due Diligence Steps



Attorney Bios

05

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Patrick F. Stokes

Partner / Washington, D.C.

Patrick Stokes is a litigation partner in Gibson, Dunn & Crutcher's Washington, D.C. office. He is the co-chair of the Anti-Corruption and FCPA Practice Group and a member of the firm's White Collar Defense and Investigations, Securities Enforcement, and Litigation Practice Groups.

Patrick's practice focuses on internal corporate investigations, government investigations, enforcement actions regarding corruption, securities fraud, and financial institutions fraud, and compliance reviews. He has tried more than 30 federal jury trials as first chair, including high-profile white-collar cases, and handled 16 appeals before the U.S. Court of Appeals for the Fourth Circuit. Patrick regularly represents companies and individuals before DOJ and the SEC, in court proceedings, and in confidential internal investigations. Most recently, *Best Lawyers in America*® recognized Patrick as a "Best Lawyer" in Criminal Defense: White-Collar (2024). He is recognized by *Chambers Global*, *Chambers USA*, and the *Who's Who Legal Thought Leaders USA* guide as a leading FCPA investigations practitioner.

Prior to joining Gibson Dunn, Patrick spent nearly 18 years with the U.S. Department of Justice (DOJ). From 2014 to 2016, he headed the FCPA Unit, managing the DOJ's FCPA enforcement program and all criminal FCPA matters throughout the United States, covering every significant business sector, and including investigations, trials, and the assessment of corporate anti-corruption compliance programs and monitorships. Patrick also served as the DOJ's principal representative at the OECD Working Group on Bribery working with law enforcement and policy setters from 41 signatory countries on anti-corruption enforcement policy issues.

From 2010 to 2014, he served as Co-Chief of the DOJ's Securities and Financial Fraud Unit. In this role, he oversaw investigations and prosecutions of financial fraud schemes involving market manipulation, accounting fraud, benchmark interest rate manipulations, insider trading, Troubled Asset Relief Program (TARP) fraud, government contract and procurement fraud, and large-scale mortgage fraud, among others. Patrick also led the successful prosecution of one of the largest bank and securities fraud cases to come out of the financial crisis.

Patrick's full biography can be viewed here.

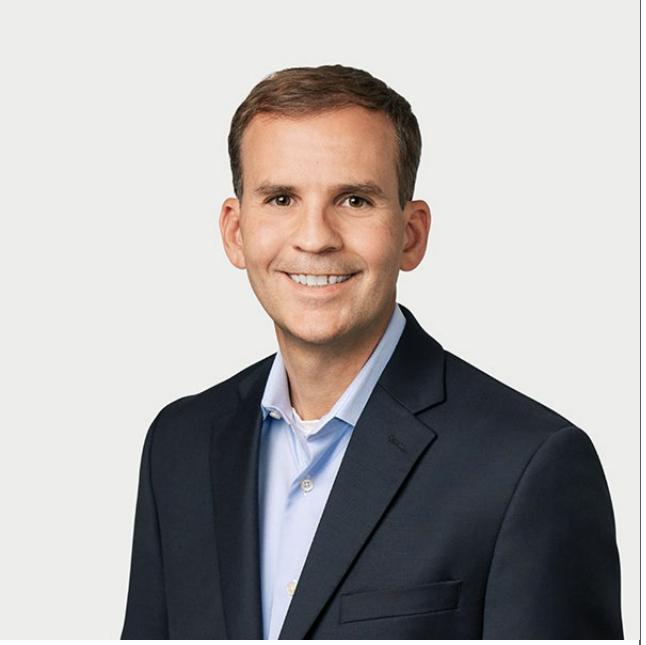
EDUCATION

University of Virginia
Juris Doctor

University of Virginia
Bachelor of Arts

SELECTED RECOGNITION

Leading Lawyer: FCPA
- Chambers USA; Chambers Global



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John W.F. Chesley

Partner / Washington, D.C.

John Chesley is a litigation partner in Gibson Dunn's Washington, D.C. Office. He focuses his practice on white-collar criminal enforcement and government-related litigation. He represents corporations, board committees, and executives in internal investigations and before government agencies in matters involving the Foreign Corrupt Practices Act, procurement fraud, environmental crimes, securities violations, sanctions enforcement, antitrust violations, and whistleblower claims. He also has significant trial experience before federal and state courts and administrative tribunals nationwide, with a particular focus on government contract disputes.

John served as the Interim Chief Ethics & Compliance Officer of a publicly traded, multinational corporation, responsible for managing a global team of compliance personnel. In this role, John conducted and oversaw internal investigations, managed a whistleblower hotline, provided compliance advice, created and updated compliance policies, and administered compliance training for tens of thousands of employees worldwide. This opportunity provided John with first-hand insights into the day-to-day challenges experienced by in-house counsel, which he uses to bring practical solutions to the table for all of his clients.

John has been recognized repeatedly as one of the leading lawyers of his generation. Specifically, he was named one of the "world's leading young investigations specialists" by *Global Investigations Review* "40 Under 40," as well as a "Rising Star" in the Government Contracts and White Collar fields by *Law360* and *The National Law Journal*, respectively. Most recently, John was recognized by Washington, D.C. *Super Lawyers* as a "Top Rated White Collar Attorney." He also has been recognized by *Benchmark Litigation* as a "Future Litigation Star" in Washington, D.C. (2020) and by *Who's Who Legal Investigations* guide as a "Future Leader" in Investigations (2022 and 2023).

John graduated with honors from the Georgetown University Law Center in 2005, where he attended classes while working for the National Criminal Enforcement Section of the U.S. Department of Justice, Antitrust Division. He received his undergraduate degree with honors from the University of Maryland in 2001 and also is a former police officer.

John's full biography can be viewed here.

EDUCATION

Georgetown University
Juris Doctor

University of Maryland
Bachelor of Arts

SELECTED RECOGNITION

Government Contracts Rising Star; White Collar Defense Rising Star
- Law360; National Law Journal

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Courtney M. Brown

Partner / Washington, D.C.

Courtney M. Brown is a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher, where she practices primarily in the areas of white-collar criminal defense and corporate compliance. Courtney has experience representing and advising multinational corporate clients and boards of directors in internal and government investigations on a wide range of topics, including anti-corruption, anti-money laundering, sanctions, securities, tax, and “me too” matters.

Courtney also counsels corporations on the effectiveness of their compliance programs and in connection with transactional due diligence, with a particular emphasis on compliance with anti-corruption laws, anti-money laundering regulations, and economic and trade sanctions administered by the U.S. Department of Treasury’s Office of Foreign Assets Control.

Courtney has participated in two government-mandated FCPA compliance monitorships and conducted anti-corruption and compliance trainings for in-house counsel and employees. She also has experience advising companies on the application of the U.S. Sentencing Guidelines and, since 2014, has been a contributing author for the ABA’s treatise, “Practice Under the Federal Sentencing Guidelines.”

Courtney completed a secondment at a Fortune 100 company, where she advised global legal and business teams on compliance with anti-corruption laws. Most recently, she was listed in *Best Lawyers in America*® 2024 for her work in Criminal Defense: White-Collar matters.

Courtney received her law degree in 2008 from the University of Chicago Law School. Prior to law school, Courtney worked for the Chairman of the U.S. Senate Health, Education, Labor and Pensions Committee. Courtney earned her undergraduate degree from Harvard University, where she was co-captain of the NCAA Division I championship women’s crew team and an All-American selection in rowing.

Courtney is a member of the bars of the District of Columbia and Virginia.

Courtney’s full biography can be viewed here.

EDUCATION

University of Chicago
Juris Doctor

Harvard University
Bachelor of Arts

SELECTED RECOGNITION

Criminal Defense: White Collar
- Best Lawyers in America

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Ella Alves Capone

Of Counsel / Washington, D.C.

Ella Alves Capone is Of Counsel in the Washington, D.C. office of Gibson, Dunn & Crutcher. She is a member of the White Collar Defense and Investigations, Global Financial Regulatory, FinTech and Digital Assets, and Anti-Money Laundering Practice Groups.

Ella's practice focuses on advising multinational corporations and financial institutions on Bank Secrecy Act/anti-money laundering (BSA/AML), anti-corruption, sanctions, payments, and consumer financial regulatory and enforcement matters, with a particular focus on regulatory matters impacting banks, casinos, social media and gaming platforms, marketplaces, fintech, payment service providers, and digital assets businesses. She regularly advises clients on the implementation, enhancement, and assessment of their compliance programs and internal controls and on platform terms and conditions, including Terms of Service, Merchant Agreements, Sales Agreements, Payment and Refund Policies, and Payment Service Provider Agreements. Ella frequently provides clients with training on financial services regulations and corporate compliance programs, including enforcement trends, industry best practices, and regulator expectations.

Ella has significant experience representing clients in white-collar and regulatory matters involving the Department of Justice (DOJ), Securities Exchange Commission (SEC), Financial Crimes Enforcement Network (FinCEN), Office of the Comptroller of the Currency (OCC), Office of Foreign Assets Control (OFAC), the Federal Reserve, and state financial services regulators, including the New York State Department of Financial Services (DFS). She has successfully defended global clients in multi-jurisdictional and multi-agency enforcement matters involving Foreign Corrupt Practices Act (FCPA), AML, consumer financial, securities, fraud, and sanctions allegations.

Ella has significant experience working on international matters, with particular expertise in Latin America. She is fluent in Portuguese, and her representative matters include several anti-corruption and corporate compliance matters in Brazil, including the representation of Petróleo Brasileiro S.A. – Petrobras in connection with investigations by the SEC and DOJ. She is also a member of the Board of the Brazil-US 40 and Under White Collar Lawyers Initiative.

Ella's full biography can be viewed here.

EDUCATION

New York University
Juris Doctor

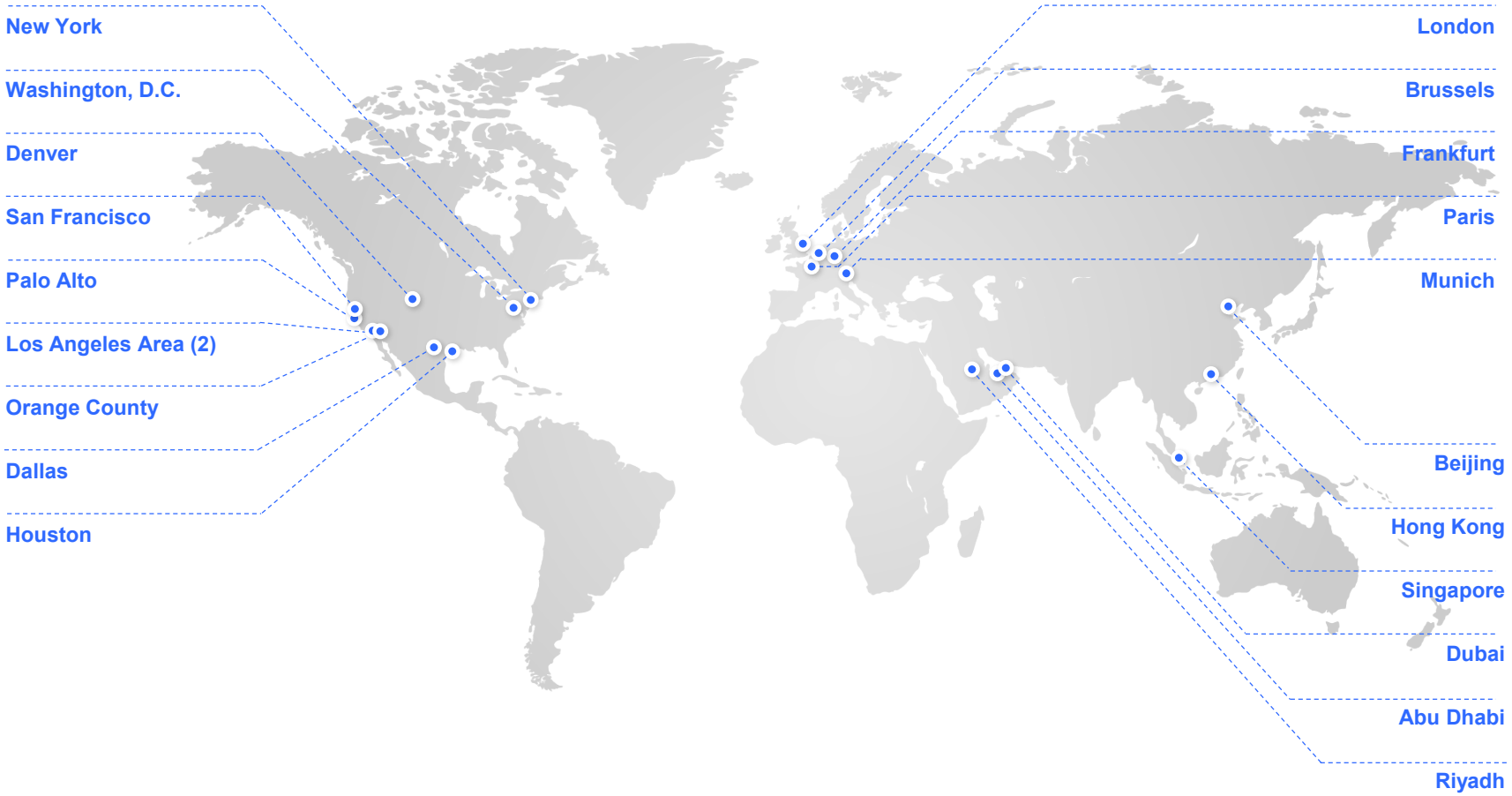
Fordham University
Bachelor of Science

SELECTED RECOGNITION

Fintech Rising Star
- Law360

White Collar Defense Rising Star
- Super Lawyers

Our Global Footprint



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APPENDIX

06

U.S. Enforcement Agencies

Department of Justice

- Criminal enforcement of anti-bribery provisions
- Criminal enforcement of other corruption-related statutes, e.g., money laundering
- ~33 prosecutors in FCPA unit

Securities and Exchange Commission

- Civil enforcement of the anti-bribery provision (issuers)
- Civil enforcement of the accounting provisions (books and records and internal controls)
- ~33 enforcers in the FCPA unit

Key DOJ Personnel

Attorney General
Merrick Garland

Deputy Attorney General
Lisa Monaco

Criminal Division
Acting Assistant Attorney General
Nicole Argentieri

93 USAOs

Money Laundering and Asset Recovery Section
Acting Chief
Molly Moeser

Fraud Section
Chief
Glenn Leon

FCPA Unit
Chief
David Fuhr

MIMF Unit
Acting Chief
Anna Kaminska

HCF
Chief
Dustin Davis

CECP Unit
Chief
Andrew Gentin

Key SEC Personnel

Commissioner
Mark T. Uyeda
(Term expires 2028)

Commissioner
Caroline Crenshaw
(Term expires 2024)

Chairman
Gary Gensler
(Term expires 2026)

Commissioner
Hester M. Peirce
(Term expires 2025)

Commissioner
Jaime Lizarraga
(Term expires 2027)

Enforcement
Director – Gurbir Grewal

FCPA Unit
Chief – Charles Cain

FCPA Overview

The FCPA was enacted in 1977 in the wake of reports that numerous U.S. businesses were making payments to foreign government officials to secure business overseas.

- **Anti-Bribery Provisions.** The FCPA prohibits corruptly giving, promising, or offering anything of value to a foreign government official, political party, or party official with the intent to influence that official in his or her official capacity or to secure an improper advantage in order to obtain or retain business.
- **Accounting Provisions.** The FCPA also requires "issuers" to maintain accurate "books and records" and reasonably effective internal accounting controls.

FCPA Anti-Bribery Provisions

- The FCPA prohibits not only completed payments, but also **any offer, promise, or authorization of the provision of anything of value**.
  - An offer to make a prohibited payment or gift, even if rejected, may violate the FCPA.
- The FCPA also prohibits **indirect corrupt payments**.
  - The FCPA imposes liability if a covered company or person authorizes a payment to a third party while "knowing" that the third party will make a corrupt payment.
  - "Knowledge" includes "willful blindness" or "conscious avoidance," such as where a person is aware of a high probability of a fact but intentionally avoids confirming that fact.
  - Third parties include local agents, attorneys, brokers, consultants, distributors, joint-venture partners, liaisons, and subsidiaries.
- There is **no "de minimis" exception**, and **a "thing of value" can include**:

Charitable / Political Contributions	Consulting Fees	Entertainment / Sporting Events
Education / Internships / Training	Free Goods	Gifts
Grants / Research Support	Meals	Travel

FCPA Accounting Provisions

- **Connection to Bribery Allegations.** Unlike the FCPA's anti-bribery provisions, the books-and-records and internal controls provisions do not require a nexus between:
  - An inaccurate book or record or a weak control, and
  - An improper payment.
- **DOJ / SEC Approach.** The government often invokes the accounting provisions where it lacks jurisdiction to bring a bribery charge or when it is seeking to compromise in the context of settlement negotiations.
  - The SEC has shown a greater willingness to bring charges based on the accounting provisions even where it lacks sufficient evidence to conclude that bribery occurred.
  - The SEC brings accounting provision charges against issuers, whereas DOJ may bring parent or subsidiary accounting provision charges.
- **Compliance Controls.** The SEC takes an expansive approach to the internal controls provision, including non-accounting-related deficiencies and issues traditionally that it perceives as associated with weak corporate compliance programs.

Use of Money Laundering Offenses in FCPA Enforcement Actions

- DOJ continues to use **anti-money laundering ("AML") charges** for foreign corruption-related conduct. AML offenses can be easier to capture and can be brought against certain conduct and individuals that the FCPA doesn't reach.
  - For instance, AML charges can be brought against the foreign official recipient of a bribe payment.
- AML statutes generally criminalize **conducting or attempting to conduct a transaction involving proceeds of "specified unlawful activity"** with knowledge they are proceeds of "unlawful activity."
  - **Unlawful Activity** – Generally any violation of criminal law – federal, state, local, or foreign.
  - **Specified Unlawful Activities** – There are over 200 specified unlawful activities consisting of U.S. (e.g., FCPA) and certain foreign crimes (e.g., bribery of a public official, embezzlement of public funds, fraud, and defrauding a foreign bank).
  - **Knowledge includes "willful blindness"** – Ignoring red flags.

GIBSON DUNN