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*On the Cover*

## Cleaning Up Corruption

Los Angeles lawyers  
Joseph D. Lee  
and Marianne Wisner  
examine the current  
extraterritorial  
enforcement  
of the U.S. Foreign  
Corrupt Practices Act  
on non-U.S. firms

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by Joseph D. Lee and Marianne Wisner

# Cleaning Up Corruption

Global threats, such as terrorism, climate change, and the refugee crisis, are often permeated by corruption

**JACK AND JILL** are sitting in a conference room in their native Freedonia. They work for a Freedonian publicly traded company, Cyberdyne Systems, which is expanding its sales around the globe while focusing on government customers. Jack and Jill are responsible for sales in several foreign countries, including Syriana. Sales lag in Syriana, so Jack and Jill retain a sales agent, Sarah Conor, there who has a strong track record of winning major government contracts. Jack and Jill know

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HADI FARAHANI

*[Handwritten signature]*

Conor has a reputation for paying bribes but they proceed on the basis of verbal assurances that Conor will toe the line.

Three weeks after Conor's retention, the Syriana government awards Cyberdyne a large contract. Months later, rumors circulate that Conor paid substantial bribes to Syriana officials to win the contract. An internal investigation confirms the rumors.

Cyberdyne has no offices or personnel in the United States. No actions taken in connection with the Syriana government contract occurred in the United States,

States. The FCPA's foreign payment provisions—the provisions of the act prohibiting bribery of foreign government officials—apply to “any issuer” of a U.S. security,<sup>2</sup> including an ADR. This means that if employees of one of these companies pay bribes to a foreign government official (i.e., one outside the United States) to win a contract or obtain another improper advantage, the bribery likely violates the FCPA. This is true so long as the scheme also involves the use of U.S. mail “or any means or instrumentality of interstate commerce,”<sup>3</sup> which could at least arguably be

corporate FCPA enforcement actions. All were against non-U.S. companies that issued ADRs: Amec Foster Wheeler Energy Limited, Credit Suisse Group AG, Deutsche Bank AG, and WPP plc.<sup>8</sup> Of the ten largest U.S. monetary sanctions obtained to date pursuant to the FCPA, foreign companies account for nine.<sup>9</sup> These nine settlements total more than \$12.6 billion—a healthy sum. (See chart on this page.)

If Congress enacted the FCPA to punish and deter U.S. companies and persons from paying bribes overseas, why did the U.S. Department of Justice (DOJ) and Securities and Exchange Commission (SEC) shift their focus from U.S. companies to foreign companies that pay bribes outside the U.S.? One answer is simple: Because they can. The recoveries are large and newsworthy. The 40 biggest FCPA resolutions assessed penalties in excess of \$20 billion, much of which goes to the U.S. Treasury (with a substantial amount going to foreign governments, whose regulators appear to increasingly cooperate with U.S. regulators).<sup>10</sup> However, there is more to the puzzle than that. In the years following the FCPA's enactment, the law came under criticism by those who argued it created an unfair playing field, giving foreign firms an advantage over U.S. companies. As President Clinton put it in a public statement accompanying his signing of 1998 amendments to the FCPA:

Since the enactment in 1977 of the Foreign Corrupt Practices Act (FCPA), U.S. businesses have faced criminal penalties if they engaged in business-related bribery of foreign public officials. Foreign competitors, however, did not have similar restrictions and could engage in this corrupt activity without fear of penalty. Moreover, some of our major trading partners have subsidized such activity by permitting tax deductions for bribes paid to foreign public officials. As a result, U.S. companies have had to compete on an uneven playing field, resulting in losses of international contracts estimated at \$30 billion per year.<sup>11</sup>

The 1998 amendments sought to level the playing field by, among other changes, making the FCPA applicable to foreign nationals who commit acts in furtherance of a foreign bribery scheme while in the territory of the United States.<sup>12</sup> But this is small potatoes because many bribery schemes by foreign companies do not involve persons present in the United States. Pursuing foreign companies that issued ADRs or have substantial opera-

### 10 Largest FCPA Monetary Sanctions

COMPANY	COUNTRY	AMOUNT IN USD
Odebrecht S.A./Braskem S.A.	Brazil	\$3,557,626,137
The Goldman Sachs Group, Inc.	United States	\$2,617,088,000
Airbus SE	Netherlands	\$2,091,978,881
Petróleo Brasileiro S.A. – Petrobras	Brazil	\$1,786,673,797
Telefonaktiebolaget LM Ericsson	Sweden	\$1,060,570,832
Telia Company AB	Sweden	\$965,604,372
Mobile Telesystems Public Joint Stock Company	Russia	\$850,000,400
Siemens Aktiengesellschaft	Germany	\$800,002,000
VimpelCom Ltd	Holland	\$795,326,798
Alstom S.A.	France	\$772,291,200

Source: Stanford Law School, FCPA Clearinghouse, [fcpa.stanford.edu/statistics-top-ten.html](http://fcpa.stanford.edu/statistics-top-ten.html).

other than a brief e-mail exchange with a U.S. reference for Conor. Jack and Jill were in Freedomia when they retained Conor and through the time Conor paid the bribes. Likewise, Conor paid all the bribes in Syriana. Has Cyberdyne Corp. nonetheless violated the U.S. Foreign Corrupt Practices Act (FCPA), which prohibits the payment of bribes by U.S. persons to foreign government officials?

The answer may very well be yes—if Cyberdyne trades its securities on a U.S. exchange. Many foreign companies do so, through a security known as an “American Depositary Receipt” (ADR)—a negotiable certificate issued by a U.S. depositary bank representing a specified number of shares (usually one share) of a foreign company's stock.<sup>1</sup> The ADRs of many well-known foreign companies such as Alibaba Group (China), AstraZeneca (Britain/Sweden), and Nokia (Finland) trade in the United

satisfied by a single e-mail or phone call to or from a U.S.-based individual.<sup>4</sup>

This all sounds, on its face, a little odd. After all, Congress enacted the FCPA in 1977 in response to widely reported instances of U.S. companies' paying bribes overseas.<sup>5</sup> It was not a goal of the statute, when enacted, to punish or deter foreign companies from paying bribes to non-U.S. government officials.<sup>6</sup> Indeed, in the initial years following the FCPA's enactment, U.S. law enforcement focused on domestic U.S. companies and individuals. According to one commentator: “Between the statute's enactment in 1977 and the end of 2004, the government charged only eight foreign individuals and five foreign companies with FCPA violations, compared with 57 U.S. individuals and 43 U.S. companies.”<sup>7</sup>

That has changed, and markedly so. In 2021, federal regulators initiated four

tions in the United States<sup>13</sup> has proven a far more significant weapon in the DOJ and SEC's arsenal.

What a weapon it has been. A June 2020 study concluded that “a mid-2000s increase in extraterritorial enforcement of the US Foreign Corrupt Practices Act (FCPA)...has a significant deterrent effect on foreign direct investment in high-corruption-risk countries,” resulting in a net decline of foreign direct investment in such high-corruption-risk countries—and more specifically, that “widespread extraterritorial enforcement helps to create a level foreign-investment playing field.”<sup>14</sup> The reduction in foreign investment may be due in part to the fact that the DOJ and SEC have negotiated significantly larger payments, on average, from foreign companies than from U.S. companies. As one study concludes: “The average cost of resolving an FCPA enforcement action to non-U.S. corporations of resolving an FCPA enforcement action has been more than four times higher than it has been for domestic corporations: \$72.3 million to \$17.6 million.”<sup>15</sup>

As this statistic reflects, leveling the playing field does not fully explain U.S. law enforcement's recent focus on foreign firms. Other nations criminalize overseas bribes, and at least some of these nations actively pursue their own domestic corporations that violate such provisions.<sup>16</sup> With the possible exception of Russia, all of the countries listed in the “Top 10” list above criminalized the conduct and pursued their errant corporations. Nonetheless, the DOJ and SEC continued to pursue foreign companies, obtaining large settlements from them, even when those companies faced active regulatory investigations in their native countries. For example, the DOJ announced an \$800 million settlement with Siemens AG for an alleged bribery scheme (focused on Bangladesh, Venezuela and Argentina), which was in addition to another \$800 million that Siemens AG paid to resolve an investigation by German law enforcement (the Munich Public Prosecutor's Office).<sup>17</sup> So, the “because they can” explanation for the foreign focus in recent FCPA enforcement appears to remain part of the equation.

Indeed, the DOJ and SEC not only can pursue foreign firms—they affirmatively should do so. “Corruption permeates—and facilitates—some of the most important global threats of our time, such as terrorism, climate change and the refugee crisis.”<sup>18</sup> Socially conscious shareholders, whether in the United States or abroad,

## OECD Enforcement Ratings

**ACTIVE ENFORCEMENT:** 7 countries with 27% of world exports

Germany, Israel, Italy, Norway, Switzerland, United Kingdom, United States

**MODERATE ENFORCEMENT:** 4 countries with 3.8% of world exports

Australia, Brazil, Portugal, Sweden

**LIMITED ENFORCEMENT:** 11 countries with 12.3 % of world exports

Argentina, Austria, Canada, Chile, France, Greece, Hungary, Lithuania, Netherlands, New Zealand, South Africa

**LITTLE OR NO ENFORCEMENT:** 22 countries with 39.6% of world exports

Belgium, Bulgaria, China, Colombia, Czech Republic, Denmark, Estonia, Finland, Hong Kong,\* India, Ireland, Japan, Luxembourg, Mexico, Poland, Russia, Singapore, Slovakia, Slovenia, South Korea, Spain, Turkey

Source: Transparency Int'l, Foreign Bribery Rages Unchecked in over Half of Global Trade, [transparency.org/resource/exporting-corruption-2018](https://www.transparency.org/resource/exporting-corruption-2018). \*(Hong Kong, although part of China, is treated here as a separate entity.)

do not want their funds used to line the pockets of rogue foreign officials—that is not what they think they are buying when purchasing shares on a U.S. exchange. Therefore, DOJ and SEC enforcement actions against foreign firms align with these shareholders' expectations and help mitigate the impacts of corruption on the global economy.

A final reason for the foreign focus of FCPA enforcement activities may be that foreign companies and their third-party agents and representatives are later to the learning curve on how to create an anti-bribery, anti-corruption culture and implement an effective compliance program. Large U.S. companies and their compliance arms began learning about the breadth of the FCPA in the 1970s. Foreign countries and companies, by contrast, appear to have begun focusing on anti-corruption measures mainly following the formation of the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which was signed in 1997 and became effective in 1999. At the time of signing, over half the original 29 signatory countries permitted corporations to deduct bribes from their tax obligations.<sup>19</sup>

More broadly—or perhaps we should say, more globally—the U.S. government has also sought to level the playing field through cooperation with other countries. The United States has been a leading proponent of the OECD Convention since its inception. Each of the current 44 signa-

tories to the convention pledged:

[T]o establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.<sup>20</sup>

That sounds a lot like the anti-bribery provisions of the FCPA. Further, the OECD signatories continue to act to deter bribery. In November 2021, they agreed to new measures to reinforce their efforts to prevent, detect, and investigate foreign bribery.<sup>21</sup> Due to the OECD Convention, bribery is now a crime in all 44 signatory countries, corporate liability laws have been created or strengthened, and 11 countries were sanctioned for offenses related to bribery, money laundering, or accounting fraud.<sup>22</sup>

That said, the promulgation of the OECD Convention does not seem likely to reduce U.S. law enforcement's zeal for pursuing foreign companies under the FCPA. In the first place, while 44 countries have now signed on, some 151 countries have not. Moreover, even for the 44 that have signed on, implementation has been uneven. As a global coalition against corruption, Transparency International, noted: “A true commitment to a corrup-

tion-free business environment demands more than words or laws—it demands enforcement.”<sup>23</sup> Transparency International assessed non-U.S. countries’ zeal for anti-bribery prosecutions based on the most recent OECD report (from 2018) (see chart on previous page) and found that only seven of the OECD Convention’s signatories actively enforced laws that prohibit overseas corruption.

In the coming years, we can expect to see a continued focus by U.S. law enforcement on foreign companies subject to the FCPA. In a December 2021 announcement, the Biden Administration—noting the national security risks raised by international corruption—pledged to “continue to vigorously enforce the Foreign Corrupt Practices Act...and other statutory and regulatory regimes via criminal and civil enforcement actions.”<sup>24</sup>

One interesting point to watch for is whether the DOJ or SEC will pursue charges against Chinese companies under the FCPA. To date, only a single Chinese company has been charged under the FCPA—and yet some 248 Chinese-based companies reportedly have securities listed on a U.S. exchange.<sup>25</sup> China has long been an FCPA hotspot, with alleged bribery schemes there ranking #1 based on U.S. law enforcement actions to date.<sup>26</sup> Of course, the apparent inclination of some Chinese government officials to take bribes is not necessarily an indicator of Chinese companies’ willingness to pay bribes outside China, but one might not expect a significant divergence between the two. Diplomatic considerations aside—and indeed those considerations appear weighty, given current U.S.-China relations—it would seem only a matter of time before more Chinese corporations find themselves in the cross-hairs of an FCPA investigation by U.S. law enforcement. Perhaps to mitigate this risk, China has recently taken steps to crack down on bribery, though their effectiveness is subject to question.<sup>27</sup>

Another trend we expect will continue is the focus on the actions of third-party agents who pay bribes on an issuer’s behalf. Some 90 percent of recent FCPA enforcement actions have involved companies’ third parties (such as sales representatives, customs agents, and lobbyists) paying bribes, rather than bribery by a company’s employees.<sup>28</sup> Bribery by third parties creates FCPA exposure for the principal, unless it had no knowledge of, or reason to know of, the illicit payments—a difficult proposition to establish and one U.S. law enforcement treats with skepticism.<sup>29</sup> The prevalence of FCPA enforce-

ment actions based on third-party conduct underscores the importance of conducting risk-based diligence; understanding the business rationale for transactions; conducting ongoing monitoring, such as the exercise of audit rights; and communicating compliance program expectations to third parties, and receiving assurances of compliance from them.<sup>30</sup> ■

<sup>1</sup> Adam Hayes, American Depositary Receipt, INVESTOPEDIA (updated Aug. 29, 2021), <https://www.investopedia.com/terms/a/adr.asp>. The reason foreign companies issue such shares is simple: “ADRs enable [foreign companies] to attract American investors and capital without the hassle and expense of listing on U.S. stock exchanges.” *Id.*

<sup>2</sup> 15 U.S.C. §78dd-1.

<sup>3</sup> *Id.*

<sup>4</sup> The FCPA defines “interstate commerce” to mean not only “trade, commerce, transportation, or communication among the several States” but also “between any foreign country and any State or between any State and any place or ship outside thereof.” 15 U.S.C. §78dd-2(h)(5).

<sup>5</sup> See Mike Koehler, *The Story of the Foreign Corrupt Practices Act*, 73 OHIO ST. L.J. 5:929 (2012), available at <https://fcpa.stanford.edu/academic-articles/20120101-the-story-of-the-fcpa.pdf>. For example, Los Angeles-based companies that allegedly bribed foreign officials included Lockheed Aircraft Corporation and Northrop Corporation. See William H. Jones & John F. Berry, *Lockheed Paid \$38 Million in Bribes Abroad*, WASH. POST, May 27, 1977, available at <https://www.washingtonpost.com/archive/business/1977/05/27/lockheed-paid-38-million-in-bribes-abroad/800c355c-ddc2-4145-b430-0ae24fd6648/>; and Eileen Shanahan, S.E.C. Says Northrop Kept \$30-Million Secret Fund, N.Y. TIMES, Apr. 17, 1975, available at <https://www.nytimes.com>.

<sup>6</sup> Hurd Baruch, *The Foreign Corrupt Practices Act*, HARV. BUS. REV. (Jan. 1979), available at <https://hbr.org/1979/01/the-foreign-corrupt-practices-act>.

<sup>7</sup> Kristen Savelle, *The FCPA’s (Narrowing?) Extraterritorial Reach: Implications of United States v. Hoskins*, CHINA L. CONNECT 2 (Dec. 15, 2018); see also U.S. Sec. & Exchange Comm’n, SEC Enforcement Actions: FCPA Cases, <https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases> (last visited Dec. 27, 2021).

<sup>8</sup> Stanford Law School - Foreign Corrupt Practices Act Clearinghouse, Enforcement Actions (687), <https://fcpa.stanford.edu/enforcement-actions.html> (last visited Dec. 27, 2021).

<sup>9</sup> Stanford Law School - Foreign Corrupt Practices Act Clearinghouse, Largest U.S. Monetary Sanctions by Entity Group, <https://fcpa.stanford.edu/statistics-top-ten.html> (last visited Dec. 27, 2021).

<sup>10</sup> See Harry Cassin, *The FCPA Top 40 surges past \$17 billion*, FCPA Blog (Mar. 6, 2020), <https://fcpa.blog.com/2020/03/06/the-fcpa-top-40-surges-past-17-billion/> (noting that the 40 largest settlements as of March 2020 exceeded \$17.1 billion); U.S. Dep’t of Justice, Related Enforcement Actions: 2020, <https://www.justice.gov/criminal-fraud/case/related-enforcement-actions/2020> (last visited Dec. 27, 2021) (listing settlements of some \$3.8 billion since March 2020).

<sup>11</sup> Presidential Statement on Signing of the international Anti-Bribery and Fair Competition Act of 1998 (Nov. 10, 1998), available at <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/11/14/signing.pdf>.

<sup>12</sup> 15 U.S.C. §78dd-1 *et seq.* See U.S. Dep’t of Justice, Foreign Corrupt Practices Act: Overview, [\[justice.gov/criminal-fraud/foreign-corrupt-practices-act\]\(https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act\) \(last visited Dec. 27, 2021\).](https://www</a></p></div><div data-bbox=)

<sup>13</sup> The SEC pursues cases against foreign entities with operations, but no ADRs, in the United States such as Weatherford International. See, e.g., SEC Charges Weatherford International With FCPA Violations, Exchange Act Release No. 2013-352, (Nov. 16, 2013), available at [https://www.sec.gov/news/press-release/2013-252#\\_UpTJkY02byA](https://www.sec.gov/news/press-release/2013-252#_UpTJkY02byA).

<sup>14</sup> Hans Bonde Christensen et al., *Policeman for the World: The Impact of Extraterritorial Enforcement on Foreign Investment and Internal Controls*, SSRN (Oct. 8, 2021) (quoting abstract), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3349272](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3349272).

<sup>15</sup> Michael S. Diamant et al., *FCPA Enforcement Against U.S. and Non-U.S. Companies*, 8 MICH. BUS. & ENTREPRENEURIAL L. REV. 353, 355 (2019).

<sup>16</sup> See also Crown, Serious Fraud Office, Serious Fraud Office secures third set of Petrofac bribery convictions (Oct. 4, 2021), <https://www.sfo.gov.uk/2021/10/04/serious-fraud-office-secures-third-set-of-petrofac-bribery-convictions/>; Press Release, Vitol Inc. Agrees to Pay over \$135 Million to Resolve Foreign Bribery Case (Dec. 3, 2020), available at <https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case> [hereinafter Vitol Press Release]. The DOJ credits Vitol Inc. with \$45 million paid to resolve Brazilian Ministerio Publico Federal investigation of conduct related to the Brazilian bribery scheme.

<sup>17</sup> Press Release, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 Million in Combined Criminal Fines (Dec. 15, 2008), available at <https://www.justice.gov/archive/opa/pr/2008/December/08-crm-1105.html>.

<sup>18</sup> FIGHTING THE CRIME OF FOREIGN BRIBERY, THE ANTI-BRIBERY CONVENTION & OECD WORKING GROUP ON BRIBERY (2021), available at <https://www.oecd.org/corruption/Fighting-the-crime-of-foreign-bribery.pdf> [hereinafter ANTI-BRIBERY CONVENTION]. See also Sean Fleming, *Corruption costs developing countries \$1.26 trillion every year - yet half of EMEA think it's acceptable*, World Econ. Forum (Dec. 9, 2019), <https://www.weforum.org/agenda/2019/12/corruption-global-problem-statistics-cost/>.

<sup>19</sup> ANTI-BRIBERY CONVENTION, *supra* note 18.

<sup>20</sup> Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD, art. 1, para. 1.

<sup>21</sup> 2021 OECD Anti-Bribery Recommendation OECD (Nov. 26, 2021), available at <https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm>; Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, OECD Legal Instruments (amended Nov. 25, 2021), available at <https://legalinstruments.oecd.org/en/instruments/OECDLE-GAL-0378>. Key elements of the recommended steps include:

- Promote a holistic approach to fighting foreign bribery through new measures to enhance awareness-raising and training of, as well as detection by, key government agencies.
  - Strengthen enforcement of foreign bribery laws, including through proactive detection and investigation of foreign bribery, more effective international cooperation among law enforcement authorities and cooperation in multi-jurisdictional cases.
  - Address the demand side of foreign bribery cases by calling on countries to address the solicitation and acceptance of bribes and better support companies facing bribe solicitation risks.
- The November 2021 recommendations also update the “Good Practice Guidance” for companies, fol-

lowing the lead of the DOJ's guidance for EVALUATION OF CORPORATE COMPLIANCE PROGRAMS (updated June 2020), available at <https://www.justice.gov/criminal-fraud/page/file/937501/download>; the RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT, Crim. Div. U.S. Dep't Justice & Enforcement Div. SEC (July 2020), available at <https://www.justice.gov/criminal-fraud/file/1292051/download> [hereinafter RESOURCE GUIDE]; and the six principles set forth in the United Kingdom Ministry of Justice's BRIBERY ACT OF 2010 GUIDANCE, available at <https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>.<sup>22</sup> ANTI-BRIBERY CONVENTION, *supra* note 18.

<sup>23</sup> Strengthening Enforcement of the OECD Anti-Bribery Convention, Transparency International, <https://www.transparency.org/en/projects/strengthening-enforcement-of-the-oecd-anti-bribery-convention-1> (last visited Dec. 27, 2021).

<sup>24</sup> Presidential Press Release regarding Fact Sheet: U.S. Strategy on Countering Corruption (Dec. 6, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/06/fact-sheet-u-s-strategy-on-countering-corruption/>.

<sup>25</sup> A Chinese company, which went through a reverse merger with an American blank check company, was sued for FCPA violations. See SEC v. Keyuan Petrochemicals, Inc., No. 1:13-cv-00263 (D. D.C. Feb. 28, 2013), available at <https://www.sec.gov/litigation/complaints/2013/comp-pr2013-30.pdf>; U.S.-China Econ. & Security Rev. Comm'n, Chinese Companies Listed on Major U.S. Stock Exchanges (May 13, 2021), <https://www.uscc.gov/research/chinese-companies-listed-major-us-stock-exchanges>. See also Jodi Wu et al., *A Shift in U.S. FCPA Policy – Should Chinese Companies be Worried?*, Kirkland & Ellis posting, summary of article for Bloomberg Law (June 10, 2019), <https://www.kirkland.com/publications/article/2019/06/a-shift-in-us-fcpa-policy-should-chinese-companies>.

<sup>26</sup> See Stanford Law School - Foreign Corrupt Practices Act Clearinghouse, Location of Misconduct Alleged in FCPA-Related Enforcement Actions, <https://fcpa.stanford.edu/statistics-analytics.html?tab=8> (last visited Dec. 27, 2021).

<sup>27</sup> China's Central Commission for Discipline Inspection recently announced a new anti-bribery guideline: *Opinions on Further Promoting the Investigation of Bribery and Acceptance of Bribes*. The guideline reportedly provides that companies can be excluded from doing business in China if they pay bribes there. However, it is uncertain how the guideline, which was released in Mandarin, will be enforced.

<sup>28</sup> Stanford Law School - Foreign Corrupt Practices Act Clearinghouse, Third-Party Intermediaries Disclosed in FCPA-Related Enforcement Actions, <https://fcpa.stanford.edu/statistics-analytics.html?tab=4> (last visited Dec. 27, 2021). See, e.g., Vitol Press Release, *supra* note 16; Press Release, Commodities Futures Trading Comm'n (CFTC), CFTC Orders Vitol Inc. to Pay \$95.7 Million for Corruption-Based Fraud and Attempted Manipulation (Dec. 3, 2020), <https://www.cftc.gov/PressRoom/PressReleases/8326-20> (attaching Order, In re Vitol, Inc., No. 21-01 at 10 (CFTC Dec. 3, 2020)).

<sup>29</sup> RESOURCE GUIDE, *supra* note 21, at 28; 15 U.S.C. §78dd-1(f)(2). But see 7 U.S.C. §2(a)(1)(B), and 17 C.F.R. §1.2, conferring strict liability for agent's act.

<sup>30</sup> RESOURCE GUIDE, *supra* note 21, at 62 (Hallmarks of an Effective Compliance Program). The implementation of such diligence will help reduce third-party bribery risk, but bribery of foreign officials, given evolving cooperation and the Biden Administration's pledge to vigorously enforce the FCPA, will continue to present compliance risk for foreign companies with contacts to the United States, such as securities listed on a U.S. exchange.



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