

FCPA Notebook: Transitioning to 2017

The FCPA in 2016. 50+ enforcement actions resulting in more than \$2 billion in fines and penalties.

The FCPA so far in 2017. More of the same.

The FCPA in the Trump Administration. ???



GLOBAL POLICING

Notable cases demonstrating global cooperation in investigations between U.S. and foreign enforcement agencies (as well as sharing of fines and penalties)

ODEBRECHT/BRASKEM
EMBRAER
ROLLS ROYCE
VIMPELCOM




China

remains in the FCPA's focus

22 FCPA enforcement actions involving China; Mexico comes in second at 9.

The Long Arm of the FCPA: Non-U.S. companies remain in the FCPA cross-hairs.



Some Examples:

- Teva Pharmaceutical (Israel)
- Odebrecht/Braskem (Brazil)
- VimpelCom (Holland)
- SQM (Chile)
- Embraer (Brazil)
- Rolls Royce (UK)

Aggressive Jurisdictional Theories:
 SQM's only U.S. nexus consists of Series B shares listed on the NYSE.

New Administration. New FCPA?


Trump on the FCPA

FCPA is a "horrible law and it should be changed"
 "This country is absolutely crazy" to prosecute alleged FCPA violations in places like Mexico and China
 Puts U.S. business at a "huge disadvantage"

Jay Clayton, SEC Chair
 Chaired drafting committee that issued a report calling for a reevaluation of the United States' strategy in fighting foreign corruption

Jeff Sessions, Attorney General
 "I will enforce all federal laws, including the Foreign Corrupt Practices Act."

Trevor McFadden, Deputy Assistant AG
 Authored FCPA articles suggesting that individual prosecutions deter misconduct more than corporate fines



Another "No Bribe Needed" Case

Mondelez's failure to conduct adequate due diligence and to monitor a third-party agent retained to obtain licenses in India "created the risk" that funds paid to the agent "could be used" for paying bribes.



THE FRIENDS AND FAMILY PROGRAM

Hiring practices still under FCPA scrutiny

JPMorgan Chase & Co. paid \$130 million to settle charges that it gave jobs and internships to relatives and friends of foreign officials in order to win business



Hard-core bribery still exists – and it's punished severely

2016 introduced 4 new companies to the FCPA "Top Ten"

- Teva Pharmaceutical (\$519 million)
- Odebrecht/Braskem (\$419.8 million)
- Och-Ziff (\$412 million)
- VimpelCom (\$397.6 million)



For questions or information, please contact:

John Turlais
 Special Counsel
 jturlais@foley.com
 414.297.5584

David Simon
 Partner
 dsimon@foley.com
 414.297.5519

Scott Fredricksen
 Partner
 sfredricksen@foley.com
 202.295.4799

Greg Husisian
 Partner
 ghusisian@foley.com
 202.945.6149

Z Scott
 Partner
 zscott@foley.com
 312.832.5181

Jaime Guerrero
 Partner
 jguerrero@foley.com
 213.972.4634