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by

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INTRODUCTION

After dealing with extensive political corruption, the United States (U.S.) in 1977 sought to regain its tarnished international reputation by passing the Foreign Corrupt Practices Act (FCPA), which criminalized the business bribes of foreign officials.[1] However, the initial FCPA only prosecuted U.S. corporations and individuals and ignored foreign corporations and individuals, which resulted in a competitive disadvantage for U.S. entities operating in the international markets.[2] This led to Congress amending the FCPA in 1998 to extend the FCPA's jurisdiction to foreign corporations and individuals.[3] Under the amended FCPA, U.S. agencies were statutorily authorized to enforce the FCPA against entities and individuals who weren't U.S. citizens.[4]

The amended FCPA led to an increase in the prosecution of both domestic and foreign entities and individuals over the last decade.[5] As a result of the amended FCPA, the U.S. has been vulnerable to criticism from the global community.[6] The problem with the FCPA is the broad language that permits U.S. government agencies to bring charges against entities and

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individuals whose alleged illegal conduct has no connection to the U.S.[7] This problem is exacerbated by the fact that few entities and individuals have challenged the FCPA's broad language, so there is little judicial precedent to limit the U.S. government agencies' authority.[8]

While the growth in enforcement activity has turned FCPA investigation and compliance work into lucrative big business for major U.S. law firms, it has reignited concerns about an adverse impact on U.S. business abroad.[9] Segments of U.S. businesses insist that the FCPA places them at a competitive disadvantage and even the U.S. Chamber of Commerce has called to narrow the FCPA's scope and enforcement.[10] A number of reform advocates have argued that the enforcement of anti-bribery rules by foreign governments has been minimal despite the Organization for Economic Co-operation and Development (OECD) convention.[11]

FCPA compliance costs can be quite large. These costs include the investigation of alleged illicit payments, the costs of prevention programs as well as the costs of the FCPA accounting rules.[12] A large number of these costs entail significant fixed components, making them lower on a per unit basis for larger companies, giving them a competitive advantage over their smaller counterparts.[13] Similarly, larger companies are more likely to employ in-house specialists who can absorb FCPA compliance tasks into their existing work. It becomes more probable that larger companies gain a distinct competitive advantage over small and medium-sized companies as a result of FCPA requirements. Furthermore, many new companies may find that FCPA enforcement creates more entry barriers for them.[14]

The purpose of this Note is to examine the claims that the FCPA has been applied in an aggressive and overbroad

manner against entities and individuals, even when their connections to the U.S. have been minimal. A number of FCPA cases were selected and analyzed to determine whether a FCPA prosecution was warranted given the facts and the evidence. Specifically, the slightness of the jurisdictional nexus was examined to determine whether the U.S. had the jurisdiction to investigate and prosecute entities and individuals under the FCPA.

FCPA ENFORCEMENT ABROAD: DOES IT GO TOO FAR?

As the world continues to grow smaller and business expands, corporate executives must become more familiar with the FCPA; otherwise, they face a grave risk. A World Economic Forum survey of 11,232 business managers in 125 nations reveals that nearly one-third of managers report that firms like theirs bribe to secure government contracts.[15] The percentage of firms who supposedly bribe to secure government contracts ranges from 13 percent in high-income OECD nations to 50 percent in low-income nations.[16]

Either internal or external actors can curb foreign corruption in a nation. A nation can prosecute its own bribery cases or it can coordinate cross-border investigations by other nations. The FCPA is an example of the latter.[17] The U.S. is not the only nation that prosecutes foreign corruption cases. The United Kingdom also pursues extraterritorial foreign bribery prosecution under the United Kingdom Bribery Act of 2010. However, due to its longer history, the FCPA provides more cases for analysis.[18]

The FCPA's anti-bribery provision criminalizes bribes to foreign officials.[19] Under the FCPA, foreign bribery in

general is the act of offering a foreign official payment in exchange for some type of business advantage.[20] The anti-bribery provision covers three types of actors: issuers, domestic concerns and any person who violates the provision while corruptly using U.S. instrumentalities in U.S. territories.[21]

The coverage of multiple actors has given the U.S. a powerful and flexible tool for prosecuting foreign actors for bribery. As an example, foreign corporations can be issuers for FCPA purposes. Since foreign shares can be traded in U.S. markets as American Depository Receipts (ADR), the issuing foreign corporation becomes an issuer under the jurisdiction of the FCPA.[22] In the absence of ADR, FCPA violations can occur in the U.S. just by routing the funds through a U.S. bank.[23]

Many have claimed that the number of FCPA cases prosecuted with questionable nexus is quite large.[24] Of the thirty-nine OECD member nations, the U.S. has prosecuted the most corruption schemes with 128 cases, which constitutes over 25% of total prosecutions. The second highest is Germany, which has only prosecuted 26 cases.[25]

Here are a number of FCPA cases that have been questioned on their merits:

The Azerbaijan Oil Privatization Case: U.S. v. Kozeny[26]

Frederic Bourke co-founded Dooney & Bourke, the company known for its line of fine handbags and other leather accessories.[27] In the 1990s, Bourke met Viktor Kozeny, known as the "Pirate of Prague," who collected tens of millions of dollars after paying bribes to government officials in relation to the privatization of state-owned industries in the Czech

Republic.[28] It later became clear that Bourke knew of Kozeny's reputation.[29]

After the collapse of the Soviet Union, Azerbaijan reclaimed its independence in 1991 and began to privatize government assets. One target for privatization was the government-owned oil company, State Oil Company of the Azerbaijan Republic (SOCAR) and the method proposed was the voucher-based initiative.[30] The Azerbaijani government provided each citizen a voucher book with four coupons, which could be freely sold and they usually sold for about $12.00. Foreigners interested in participating in the auctions were required to redeem their vouchers with options issued by the State Property Committee.[31]

In 1997, Kozeny invited Bourke to travel to Azerbaijan. Kozeny then created two entities, the Minaret Group, an investment bank, and Oily Rock, which purchased the Azerbaijani government vouchers.[32] Thomas Farrell was recruited by Kozeny to assist in the purchase of the vouchers. Farrell purchased the vouchers with U.S. currency flown in on private jets from Zurich or Moscow and eventually, $200 million worth of vouchers were purchased.[33]

Kozeny and Farrell then met with the son of the Azerbaijani President, Ilham Aliyev, as well as the SOCAR vice president. Aliyev introduced Kozeny and Farrell to Nadir Nasibov, State Property Committee Chair, and Barat Nuriyev, Deputy Chair.[34] Kozeny told Nurivyev that he wanted to purchase SOCAR, which required a presidential decree. As part of the plan to purchase SOCAR, Kozeny and Nuriyev agreed that future voucher purchases would be made through Nurivev and his associates. Nuriyev also wanted an "entry fee" to be paid to Azerbaijani officials, including President Aliyev, in the

amount of $8 million to $12 million. Kozemy agreed to pay this "entry fee" and Farrell delivered the cash to Nuriyev.[35]

Nuriyev also demanded that two thirds of Oily Rock's vouchers and options be transferred to Azerbaijani officials so the officials could reap profits from SOCAR's privatization without having to invest any money. To facilitate this transfer, Kozemy instructed his attorney, Hans Bodmer, to set up several holding companies.[36]

President Aliyev then doubled the voucher requirement from one million vouchers to two million vouchers and the vouchers increased in price to $100 each. This forced Kozeny to seek additional investors and he set up a lavish event at his home in Aspen, Colorado, which Bourke attended. Kozeny then escorted a group of potential investors to Azerbaijan, including Bourke.[37]

Bourke questioned the attorney, Bodmer, about the business plan and Bodmer supposedly told Bourke about the bribery scheme. Bodmer report this conversation to Rolf Schmid, an associate at Bodmer's law firm. Schmid summarized the conversation in a memorandum.

After a number of transactions, Kozeny abandoned all hope of SOCAR's privatization in 1998. Kozeny began to wind down the business and the Minaret Group fired most of its employees. Bourke resigned from the advisory boards and Kozeny told the investors that the vouchers were worthless.[38] Around the same time, Bourke entered into a proffer agreement with the U.S. Department of Justice, waived his attorney-client privilege and instructed his attorneys to answer all questions in the investigation. When Bourke was asked if Kozeny made any corrupt payments, transfers or gifts to Azerbaijani officials, Bourke denied all knowledge.[39]

In 2005, Bourke and Kozeny were indicted. Kozeny never faced trial and fled to the Bahamas. After three days of deliberations, the jury convicted Bourke on the FCPA conspiracy and false statements charges. Bourke appealed, insisting that he never had any reason to believe Kozeny had paid bribes but the appellate court found that Bourke's arguments were meritless.[40] However, the trial judge later admitted to having doubts and at the time of Bourke's sentencing, she remarked, "After ten years of supervising this case, it is still not entirely clear to me whether Mr. Bourke was a victim, or a crook, or a little bit of both."[41]

The Nigerian Who is the Bribe-Taker Case: Securities and Exchange Commission v. Jackson[42]

As an international corporation headquartered in Texas, Noble Energy provides offshore drilling equipment and services around the world. From 2003 to 2007, one of Nobel Energy's subsidiaries operated drilling riggs of the coast of Nigeria, where the law requires rig owners to either pay permanent import duties or else obtain a temporary import permit (TIP).[43]

TIPs allowing drilling rigs to operate in Nigerian waters without paying any permanent import duties. The Nigerian Customs Service (NCS) grants TIPs for rigs that will be in Nigeria for up to a year. While the NCS may grant up to three 6-month TIP extensions, once the permit and the extensions expire, the rig must be exported from Nigeria.[44] If the rig operator wants to continue using the rig in Nigeria, s/he can either convert it to permanent status and pay permanent duties or export the rig and re-import it. Since the NCS does not deal directly with rig owners, the owners have to submit an application through a licensed customs agent.[45]

In applying for a TIP or TIP extension, Noble would typically obtain a price proposal from a customs agent and any charges that weren't supported by documentation would be ambiguously labeled as "special handling" or "procurement."[46] Noble did have an FCPA policy, which required all payments made to a foreign government without receipts to be preapproved by Noble's chief financial officer (CFO). Once the CFO approved the payments, the customs agent could pay the government officials. The customs agent would submit an invoice to Noble in reimbursement of the money paid to the Nigerian officials.[47]

The U.S. Securities Exchange Commission (SEC) alleged that Noble authorized a customs agent to pay bribes to Nigerian officials in order to obtain the false documents needed to obtain TIPS. The SEC charged Noble's CFO, Mark Jackson, and Noble's division manager, James Ruehlen with FCPA violations regarding the fraudulent permits they obtained in order to avoid import duties. It was alleged that Jackson and Ruehlen approved numerous payments to the Nigerian government with the knowledge that such payments were bribes.[48]

The SEC alleged that several events put Jackson on notice that the company was violating the FCPA. In 2003, the Nigerian government assessed a penalty against Noble for issuing false documents to obtain TIPs and in 2004, Jackson received a company-wide internal audit report indicating that employees did not understand the FCPA.[49] The SEC also alleged that Ruehlen was on notice that Noble was violating the FCPA. In 2003 and 2004, Ruehlen worked on an audit of the West Africa division, which revealed the use of false documentation and payments of approximately $75,000 every two years in order to obtain TIPs.[50]

In their defense, Ruehlen and Jackson contended that the FCPA requires a plaintiff to allege the identity of the foreign official who has been bribed. They suggested that the SEC must allege by name – or at least by role and job responsibility – the foreign official who was corruptly influenced. The SEC countered that there is nothing in the FCPA that requires pleading of the identity of the foreign official involved with the detail level the defendants advocated.[51]

The court reviewed the FCPA and its legislative history and concluded that the language of the FCPA does not appear to require that the identity of the foreign official involved be pled with specificity. The FCPA terms make it unlawful to authorize payments to any person, knowing that any portion of these payments would be offered to a foreign official. The court found it unnecessary to require the SEC to identify the name, job title and the daily duties of those foreign officials.[52]

Ruehlen and Jackson also argued that the FCPA charges should be dismissed because the SEC has failed to plead sufficient facts that would support the inference that the defendants acted "corruptly" since the facts were equally consistent that with their belief that the payments were permissible facilitating payments.[53] They further argued that the SEC had not pled that they acted corruptly because it failed to plead any violations of Nigerian law, and because both of them had a good faith belief that they were acting lawfully. Specifically, Jackson argued that he had good faith belief that that the payments were legal as facilitating payments and Ruehlen argued that he relied in good faith on the approval of the payments of his supervisors, including Jackson.[54]

The court held that the SEC should amend its complaint to plead sufficient facts to support the claim that in making the payment, Ruehlen and Jackson had a corrupt motive or wrongful purpose of influencing an official to misuse her/his position. The

court then dismissed the case without prejudice and allowed the SEC the opportunity to amend its complaint.[55]

The India Retaliatory Discharge Case: Nollner v. Southern Baptist Convention[56]

Ron Nollner is a Tennessee resident with extensive construction business experience. Nollner and his wife, Betty, are members of the Southern Baptist community. In 2008, the International Mission Board (IMB) of the Southern Baptist Convention posted a vacancy for missionary work in New Delhi, India.[57]

The IMB recruited candidates to manage construction of a new office building in Delhi, a job which among other responsibilities, required working with local companies, obtaining the necessary permits and ensuring compliance with engineering standards. This project was to last for a minimum of two years and a maximum of three and the advertisement indicated that the candidate's spouse would also be employed.[58]

The Nollners agreed to take the position after being encouraged by IMB. They thought that the position would last for at least three years. Mr. and Mrs. Nollner both quit their jobs and sold most of their assets in anticipation of moving to India for this extended period.[59]

When the Nollners arrived in New Delhi, they clearly saw that the situation was not as advertised. The planning and permitting phase of the construction project had already been completed and IMB wouldn't allow Mr. Nollner to meet with the architect or contractor until the project was well under way. Over the next several months, Mr. Nollner noticed the following:[60]

- The contractor and architectural firm were controlled by the same individual and were hired without a competitive bidding process and without a written contract;
- The contractor and architect both tried to bribe him;
- The contractor and architect were paying bribes to local Indian officials with IMB funds;
- Sham companies were established to operate the construction project;
- Incomplete job-related invoices;
- Building specifications that weren't immediately available;
- An illegal permit obtained from the Indian government after the IMB represented that the building would be used for residential rather than business purposes; and
- Substandard workmanship and materials.

When Nollner complained about these observations to his supervisors, they didn't seem too concerned indicating that they were potentially complicit in the scam. After complaining constantly about these suspicious activities, Nollner's superiors asked him to resign. When Nollner refused to resign, IMB terminated his employment claiming that his position was no longer necessary.[61]

The Nollners sued IMB, claiming they were liable under Tennessee state law for breach of contract, promissory estoppel and retaliatory discharge as ell as under federal law for violation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).[62] The Nollners asserted that IMB violated the FCPA by bribing foreign officials and then retaliating against the Nollners for reporting those violations. They further argued that the FCPA constitutes a statute subject to SEC jurisdiction, that Nollner was required to report the FCPA violations by his employer and that the DFA protected him against retaliation.[63]

The court held that the retaliatory discharge claims did not present a federal question because a state law employment action did not present a substantial federal question over which federal courts may exercise "arising under" jurisdiction.[64] Even if it were shown that the defendants violated the FCPA, a federal statute does not afford the Nollners a private cause of action and the Nollners were protected by Tennessee law against retaliation. The court therefore determined that the FCPA claim must be dismissed.[65]

COMPARING U.S. ANTI-BRIBERY ENFORCEMENT WITH OTHER NATIONS

At the time of the OECD Convention, the U.S., Germany, Japan and France were the largest OECD exporters so if the U.S. is to be compared with other nations with regard to anti-bribery enforcement, it should be with Germany, France and Japan.[66]

Germany, France and Japan depict three different reactions to global anti-bribery commitments.[67] Germany depicts high-compliance, high-enforcement and a cooperative relationship with FCPA prosecutors. France, on the other hand, practices limited anti-bribery enforcement hampered by politics and conflicted relationship with the FCPA. Japan is a nation with little anti-bribery enforcement but an open-minded approach to the FCPA prosecution of its entities.[68]

Germany's Anti-Bribery Enforcement

On a world-wide scale, Germany is number 2 – after the U.S. – in anti-bribery enforcement. In 2013, the OECD praised Germany for its "robust enforcement efforts."[69] Transparency International has ranked Germany and the U.S. as active

enforcers out of active, moderate, limited, or little/no enforcement. Compliance investigations in Germany are now commonplace and many German entities are withdrawing from nations with high corruption risks.[70]

In 2008, the German company Siemens A.G. agreed to pay $350 million to the U.S. SEC and $450 million to the U.S. Department of Justice (DOJ).[71] The U.S. government found that Siemens had violated the FCPA and the alleged bribes went from a German entity to nations including Iraq, Israel, Mexico and Venezuela, but not to any U.S. officials. Siemens wasn't the only German entity to face FCPA enforcement: Daimler AG in 2010, Deutsche Telekom AG in 2011, and Allianz SE in 2012 all paid millions of dollars in settlements for FCPA violations.[72]

The FCPA enforcement actions in Germany were not the product of unilateral U.S. action. Siemens paid an additional estimated $569 million to the German government, which investigated the entity through the Munich Public Prosecutor's Office.[73] The U.S. Attorney for the District of Columbia announced that the coordination of the U.S. and German law enforcement set the standard for global cooperation in the fight against corruption.[74] The DOJ noted that the OECD Convention legal assistance provisions enabled the collaboration between the DOJ and the Munich Public Prosecutor's Office.[75] All of this evidence indicates that Germany has a positive, working relationship with the FCPA in parallel to its own corruption proceedings.

France's Anti-Bribery Enforcement

France has a poor record when it comes to convicting French companies for foreign bribery. Since the OECD Convention, France has prosecuted five foreign bribery schemes but none of them resulted in convictions.[76] Since 2012, France

has opened twenty-four foreign corruption proceedings but only three people have been prosecuted as a result. As opposed to Germany, the OECD considers France to be insufficiently compliant with the Anti-Bribery Convention.[77]

Transparency International has categorized foreign bribery prosecution in France a limited enforcement nation, citing a lack of prosecutorial independence.[78] Statutory law hampers anti-bribery enforcement in France. France has a dual criminality requirement for foreign bribery so the bribery must be an offence in both nations in order to enable French prosecution. Furthermore, unless the offender or victim is a French national, France will not assert jurisdiction in bribery schemes so entities get around French criminal liability by dealing with intermediaries that aren't French nationals.[79]

France's relationship with extraterritorial prosecution is strained. The DOJ settled with Total in 2013 while Parisian judges in 2014 just decided that Total should be put on trial in France.[80] Data protection has been problematic for FCPA enforcement. The French Data Protection Act applies to all activity in a French territory and the Commission nationale de l'informatique et des libertes must authorize all personal data transfers to the U.S. These data transfers include information on an individual's personal affiliations, government affiliations and criminal records, which are needed in establishing bribery relationships during FCPA enforcement proceedings.[81] If anyone tries to investigate potential business partners in France, that person may be unable to obtain the information needed to ensure that the business partners aren't involved in corrupt payments.[82]

Japan's Anti-Bribery Enforcement

Japan faced strong OECD criticism for its insufficient anti-bribery enforcement.[83] While Japan has the third largest economy in the world with robust import and export businesses, it has only prosecuted four corruption schemes since the OECD Convention.[84] Transparency International ranked Japan as a "little or no enforcement" nation, which is the lowest category possible.[85]

The OECD identified a number of specific concerns about Japan's approach to foreign corruption. First, there is a lack of resources targeted for the purpose of detecting, investigating and prosecuting bribery cases. Second, Japan's Ministry of Economy, Trade and Industry has not defined what comprises a facilitation payment versus a bribe. Lastly, Japan hasn't ensured that tax inspectors are trained to identify miscellaneous tax return expenses that are actually suspicious payments.[86] While France has problems in obtaining convictions, Japan has problems setting up investigations.

In 2011, the DOJ charged JGC corporation for authorizing a joint venture to hire agents that would pay bribes to Nigerian government officials in order to obtain contracts.[87] Although JDC wasn't an issuer, the U.S. established jurisdiction through a vicarious liability theory through an American joint-venture partner. JGC paid $218.8 million in exchange for a deferred prosecution agreement.[88] It isn't clear whether Japan provided any official support to the U.S. prosecutors during the FCPA enforcement case of JGC. In the JGC case, the U.S. cited significant assistance from France, Italy, Switzerland and the U.K. but no mention of Japan.[89]

Compliance and the Free Rider Problem

Why would the U.S., Germany, France and Japan have such different approaches towards anti-bribery enforcement? Many nations are concerned that by implementing the FCPA, their companies may lose business opportunities to those companies that can offer bribes without any repercussions. While a nation may agree that bribery is bad, it does not want to bear the cost of implementing an anti-bribery legal regime at an economic cost to its companies. But nations that do prosecute bribery can't stop nations that don't prosecute bribery from benefitting from their anti-bribery enforcement and this causes a free rider problem.[90]

Free riding occurs when an actor doesn't have to pay the costs of receiving a non-excludable good. Anti-corruption enforcement creates a non-excludable good because nations that don't spend the money to enforce anti-corruption regimes still benefit from the enforcement by other nations. This benefit is twofold.[91]

First, the non-enforcing nation saves resources while other nations prosecute corrupt entities that affect the non-enforcing nation. Corruption causes economic inefficiencies by shifting resources to the corrupt project with the best bribe rather than the best quality.[92] When the U.S. prosecutes a corrupt company in a non-enforcement nation, the prosecution may force other companies in the non-enforcement nation to consider ceasing their bribery practices or risk FCPA prosecutions.

Second, a non-enforcing nation can giver their companies a competitive edge abroad. These corporations can use bribery to win contracts or avoid legal barriers while corporations from enforcing nations can't pay the bribes out of fear of FCPA prosecution. Once the number of competing nations implement anti-bribery legal structures, the non-

enforcing nation can start to prosecute bribery without the fear that its companies will lose competitors paying bribes.[93]

This leads to the question as to whether the U.S. should have investigated and prosecuted the Azerbaijan Oil Privatization, the Nigerian Who is the Bribe-Taker and the India Retaliatory Discharge cases and other such cases involving non-enforcing nations. If Azerbaijan, Nigeria, India, France and Japan won't investigate and prosecute corruption within their borders and won't cooperate with the U.S. when it investigates and prosecutes corruption, why should the U.S. take on the costs of doing the work of other nations?

One way the U.S. can combat corruption is by placing restrictions of foreign assistance. For example, appropriated funds are to be made available for direct assistance to foreign governments only if "no level of acceptable fraud is assumed" and the receiving government cooperates with the U.S. and uses competitive procurement systems and effective monitoring and evaluation processes, among other requirements.[94] Unless the receiving government effectively investigates and prosecutes corruption within its own national borders, that receiving government won't receive any U.S. assistance. This could be a solution to the free rider problem.

CONCLUSION

For two decades, the global community has agreed that nations must combat foreign bribery. But dramatic differences exist in foreign bribery investigations and prosecutions even among nations that have signed the OECD Convention. Many have claimed that the U.S. is too broad when it comes to investigating and prosecuting corruption abroad while other nations are too passive when combating corruption within their own borders.

Enforcement of anti-bribery laws aimed at global corruption remains in infancy outside the U.S. with the notable exception of Germany. Many nations are afraid of losing business opportunities as a result of implementing the FCPA so they are reluctant to investigate and prosecute bribery cases in their own jurisdictions. While there is evidence that initiatives under the OECD Convention are becoming more effective in deterring corruption by signatory nations, more needs to be done.

Inevitably, multi-national cooperation and coordination will be vital to global bribery in the future. There must be a global harmonization of the existing mechanisms that are used to investigate and prosecute corruption. Eradicating bribery and the free-rider problem, which cause the harmful distortion of global markets, is a vital step in creating a less corrupt international business environment.

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[1] *See* Ezekiel Rediker, *The Foreign Corrupt Practices Act: Judicial Review, Jurisdiction, and the Culture of Settlement",* 40 SETON HALL LEGIS. J. 53, 57 (2015) (stating that the U.S. Congress enacted the FCPA as a response to the Watergate Scandal, where U.S.-based multinational corporations created slush funds to make illegal payments to government officials, which included President Richard M. Nixon's campaign).

[2] *Id.* at 60.

[3] Barr Benyamin et al., *Foreign Corrupt Practices Act,* 53 AM. CRIM. L. REV. 1333, 1335 (2016); International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, 112 Stat. 3302.

[4] *See* Benyamin, *supra* note 3, at 1335-36.

[5] *See* Annalisa Leibold, *Extraterritorial Application of the FCPA Under International Law,* 51 WILLAMETTE L. REV. 225, 233 (2015) (noting that FCPA matters averaged 3 per year for two decades compared to totals of about 100 in the recent decade).
[6] *See* Mike Koehler, *Measuring the Impact of Non-Prosecution and Deferred Prosecution Agreements on Foreign Corrupt Practices Act Enforcement,* 49 U.C. DAVIS. L. REV. 497, 525 (2015) (international organization articulating a list of several concerns about the FCPA).
[7] *See* Leibold, *supra* note 5, at 235 (stating that U.S. agencies enforce the FCPA as broadly as possible due to the fact the FCPA's jurisdiction language is unclear).
[8] *Id.* at 239.
[9] *See* Andrew Weismann and Alixandra Smith, *Restoring Balance: Proposed Amendments to the Foreign Corrupt Practices Act*, U.S. Chamber Institute for Legal Reform, Oct. 2010 (available at https://instituteforlegalreform.com/research/restoring-balance-proposed-amendments-to-the-foreign-corrupt-practices-act/).
[10] *Id.*
[11] Rachel Brewster, *The Domestic and International Enforcement of the O.E.C.D. Anti-Bribery Convention,* 15 CHICAGO J. INT' L. 84-109 (2014).
[12] Brad Graham and Caleb Stroup, *Does Anti-Bribery Enforcement Deter Foreign Investment?* 23 APPLIED ECO. LETTERS 63-67 (2015).
[13] *Id.*
[14] *Id.*
[15] Anna D'Souza and Daniel Kaufmann, *Who Bribes in Public Contracting and Why: Worldwide Evidence from Firms,* ECON. OF GOVERNANCE 3 (2013).
[16] *Id.*
[17] Sara Saenz, *Examining International Variance in Foreign Bribery Prosecution: A Comparative Case Study,* 25 DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW 272 (2015).
[18] Michael Geiger, *220 Years Later and the Commonwealth is Still Imposing Laws on the United States: A Comparative Look at U.S. Antibribery Legislation and the United Kingdom's Bribery Act 2010,* 47 VAND. J. TRANSNAT'L. L. 1405 (2013).
[19] Foreign Corrupt Practice Act, 15 U.S.C. §§ 78dd-1 to -3 (2012). *See* Securities and Exchange Act of 1934, 15 U.S.C. §§ 78a-pp (2012).
[20] *Id.*
[21] Id. § 78dd-1. Covered issuers are those with securities registered under §781, or required to file reports; § 78dd-2. Domestic concern is a "citizen,

national or resident of the United States, or which is organized under the laws" of a State, territory, possession, or commonwealth therein.; § 78dd-3. Prohibited foreign trade practices by persons other than issuers or domestic concerns.

[22] *See* Mauro Wolfe, *Does the US Government Have Limitless Jurisdiction Enforcing the FCPA?* NEWSL. CRIM. L. SEC. LEGAL PRAC. DIVISION INT'L B. ASS'N (Int'l B. Ass'n. London, U.K.) May 2010. Fiat's American Depositary Receipts were registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

[23] *See* Richard Cassin, *With Alstom, Three French Companies Are Now in the FCPA Top Ten,* FCPA BLOG (Dec. 23, 2014, 9:45 AM), https://fcpablog.com/2014/12/23/with-alstom-three-french-companies-are-now-in-the-fcpa-top-t/.

[24] Gieger, *supra* note 18, at 1387.

[25] *Id.*

[26] 667 F.3d 122 (2nd Cir. 2011).

[27] *Id.*

[28] Charles Wallace et al., *The Pirates of Prague: An Exiled Fund Prodigy and His Brash Wall Street Mentor Promised to Teach Czech Industry Western Management Methods; Instead, Investors Learned a Painful Lesson About the Perils OF Emerging Markets,* CNN MONEY (Dec. 23, 1996), https://money.cnn.com/magazines/fortune/fortune_archive/1996/12/23/219833/index.htm.

[29] *Id.*

[30] *United States v. Kozeny*, 667 F.3d 122 (2d Cir. 2011).

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] Cecile Kuhne III, BUSINESS BRIBES: CORPORATE CORRUPTION AND THE COURTS (2017).

[42] 908 F.Supp.2d 834 (S.D.Tex. 2012).

[43] *Id.*

[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] 852 F.Supp.2d 986 (M.D.Tenn. 2012).
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, art. 12, Dec. 18. 1997, 37 LL.M.4 (OECD Convention).
[67] Sara Saenz, *Explaining International Variance in Foreign Bribery Prosecution: A Comparative Case Study,* DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW 286 (2015).
[68] *Id.*
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