



While 2013 saw a decrease in the number of corporate FCPA enforcement actions (down from twelve in 2012 to nine in 2013), regulators have cautioned that this drop does not necessarily signal an ebbing of the enforcement tide heading into 2014.

On the contrary, DOJ and SEC officials have said their agencies will continue to bring significant FCPA cases against companies and individuals in the coming year, including "top 10 quality type cases." With the prospect of vigorous enforcement on the horizon, here are four predictions to consider in 2014 based on the developments from the past year. (1) **Higher Penalties in Corporate Enforcement Actions** In 2013, the government collected over \$720 million in financial penalties from defendants, including fines, DPA/NPA penalties, disgorgement, and prejudgment interest. This equates to an average of \$80 million per corporation, a nearly four-fold increase from 2012. In fact, two of the nine corporate resolutions from 2013 joined the "FCPA Top

10" list (*Total, S.A.* (\$398.3 million) and *Weatherford International* (\$152.79 million)), with these two resolutions accounting for over 76% of total penalties for the year. Cases involving significant financial penalties are likely to crop up again in 2014. As noted above, regulators have said they have a pipeline of cases they intend to resolve in the new year, including cases that will make the FCPA Top 10 list. The DOJ/SEC's recent announcement that Alcoa settled FCPA charges for \$384 million in fines and disgorgement suggests that the Top 10 may see some new members in 2014. (2) **Higher Number of Individual Prosecutions** In contrast with the decrease in corporate enforcement actions, 2013 saw a marked increase in the number of actions brought against individual defendants. Of the nineteen FCPA cases announced by the DOJ in 2013, twelve were levied against individual defendants. And while all eight SEC defendants in 2013 were corporations, the SEC has vowed that it will ramp up its pursuit of individuals responsible for corporate malfeasance. In his remarks at the American Conference Institute's 30th International FCPA Conference last fall, the SEC's Co-Director of Enforcement, Andrew Ceresney, said his agency will be "more creative and aggressive" in pursuing actions against individuals in the new year. (3) **Hybrid Monitorships** Independent compliance monitors were imposed in four of the seven corporate enforcement actions brought by the DOJ in 2013. Three of the four monitorships were "hybrid monitorships," in which the company was required to retain an independent monitor for "not less than" 18 months, followed by self-monitoring and reporting for the remainder of the DPA term. At the ACI FCPA Conference, a former head of the DOJ's FCPA unit, Charles Duross, noted that the DOJ will continue to implement hybrid monitorships because they provide regulators with greater flexibility. This approach may mean less burdensome monitoring requirements in the coming year, especially for companies that cooperate with regulators and invest in post-enforcement remediation and compliance improvement efforts. (4) **Increase in Multi-Jurisdictional Enforcement** In 2013, U.S. regulators partnered with foreign enforcement agencies to investigate a number of international corruption cases. For example, the *Total, S.A.* case involved the first collaboration between French and U.S. law enforcement agencies. The day the U.S. settlement was announced, a French prosecutor in Paris recommended that Total, its CEO, and two additional individuals be referred to the French Criminal Court on foreign bribery charges. This cooperation is likely to continue into 2014. Companies should expect the pace and extent of U.S. cooperation with foreign investigators to grow and expand in the future.

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