



FCPA Enforcement in the COVID-19 Era Trends and Compliance Takeaways

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Road Map

COVID-19

Impact and challenges posed by COVID19

ENFORCEMENT

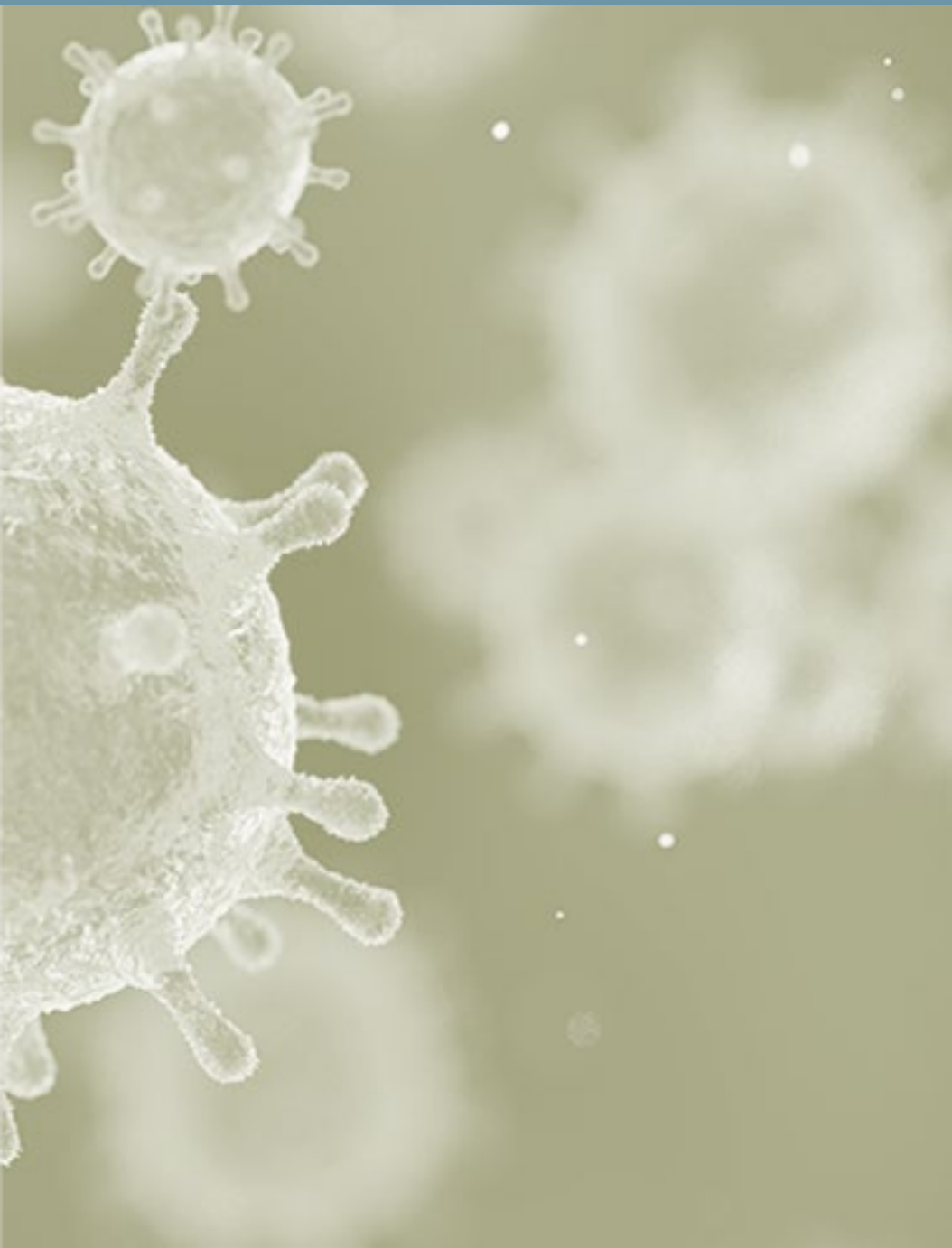
Update on 2020 settlements and enforcement cases

COMPLIANCE

Takeaways from new guidance, Covid19 challenges, and enforcement trends

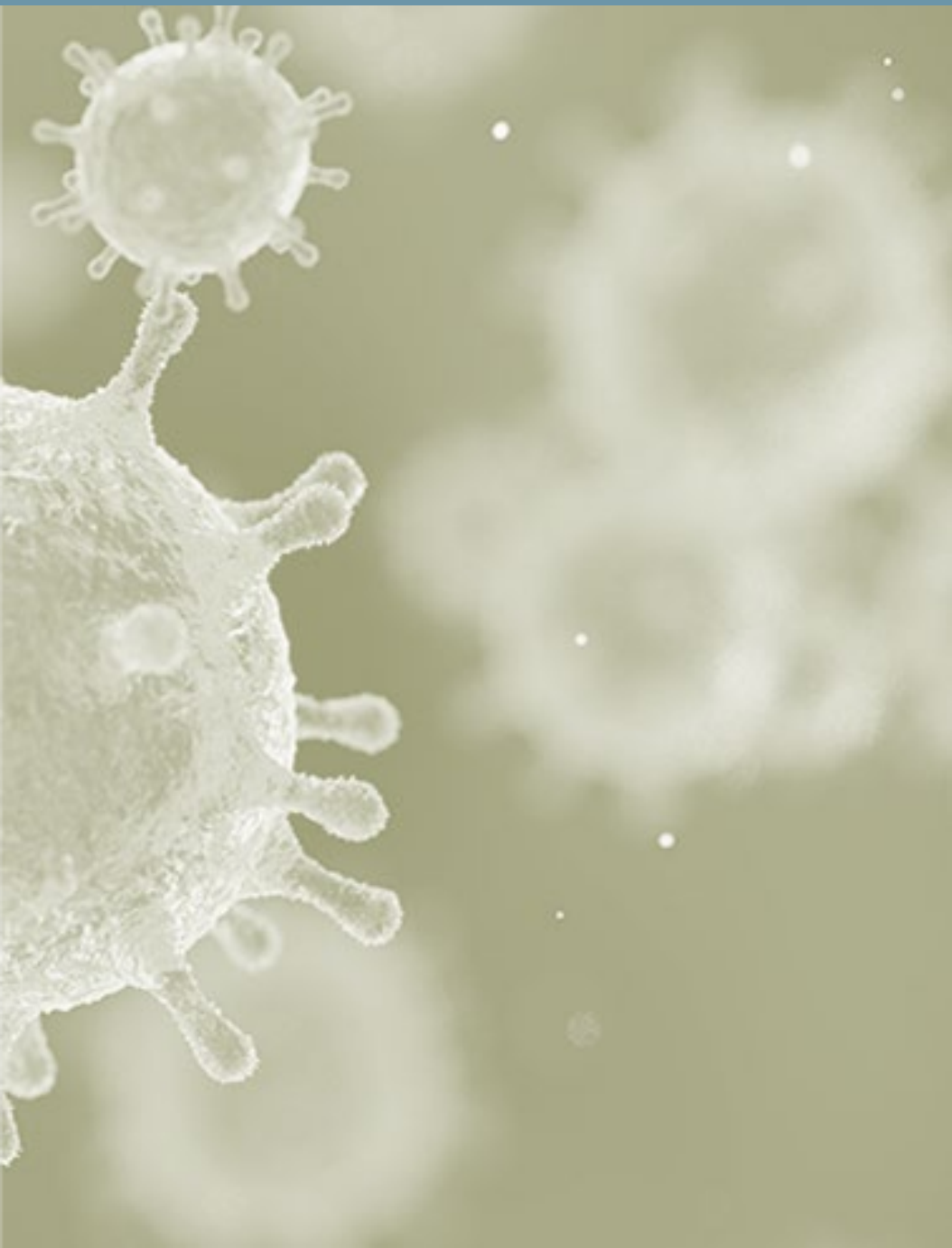
QUESTIONS

COVID-19 and FCPA Matters



Impact of COVID-19 on FCPA Matters

- Travel restrictions and their impact on internal investigations
 - Interviews
 - Document Collection
 - Presentations
- Compliance culture while working remotely



Impact of COVID-19 – New Risks

- Reports of reduced whistleblower complaints
 - Cause is unclear – speculation of fear of job loss
- Economic impact on different industries
 - Potential budget restrictions for compliance efforts
- Influence of governmental decisions relating to shutdowns and related policy
 - New opportunities for corruption as a result?



Impact of COVID-19 – New Risks

- Lack of supply chain options and urgency leading to lower due diligence standards
- Increasing fraud and corruption in public contracts and procurement
- Perhaps some good news?
 - Reduced opportunities resulting from fewer in-person meetings/events with government officials

2020 Enforcement Update



2020 Enforcement Update

- Record year for FCPA cumulative financial penalties
- 2020 also brings single largest penalty in FCPA history
 - Goldman Sachs (\$3.3 billion)
 - DOJ - \$2.3 billion criminal penalty
 - SEC - \$400 million; disgorgement of \$606.3 million

2020 Enforcement Update



ENFORCEMENT ACTIONS

2019

- DOJ – 34 actions
- SEC – 17 actions

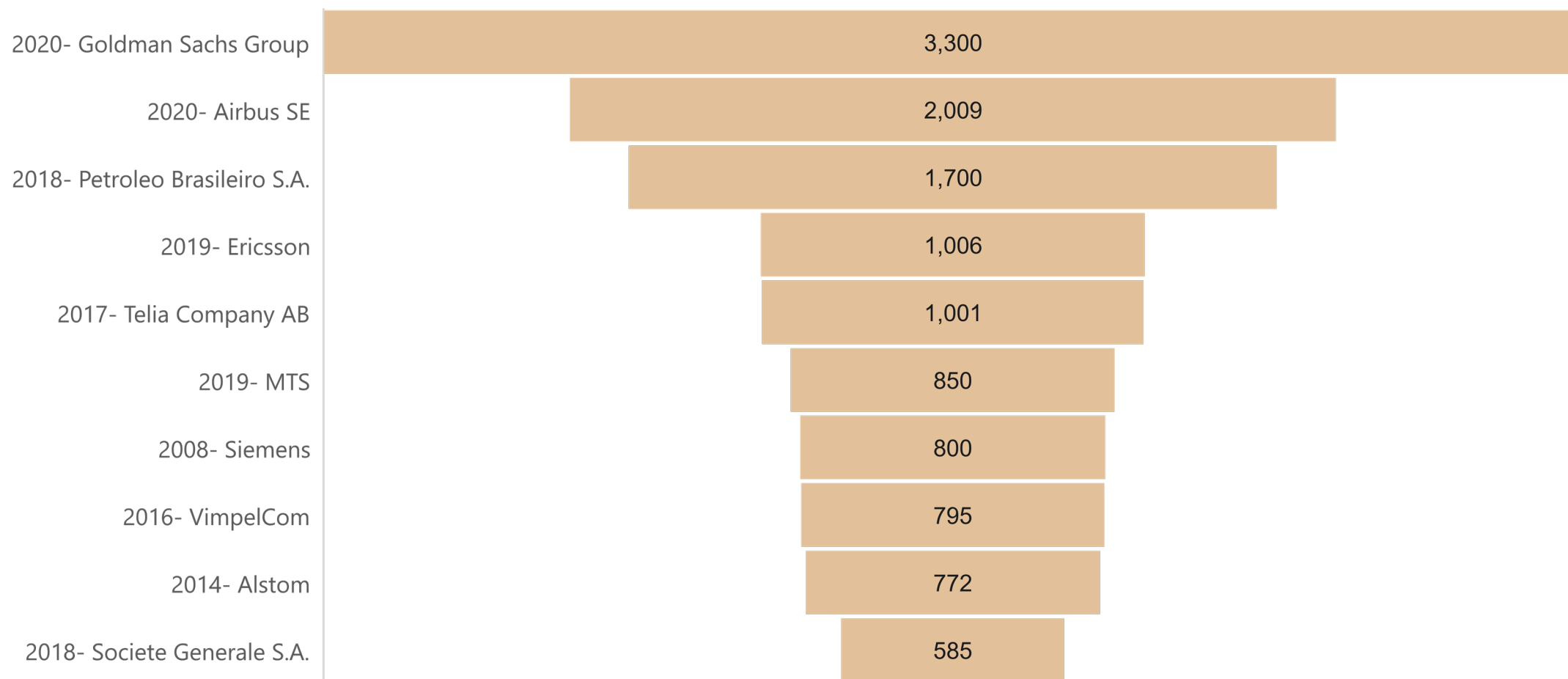
2020

- DOJ – 21 actions
- SEC – 9 actions

BY COUNTRY

- Top 10 - U.S., Netherlands (2), France (3), Brazil, Sweden (2), Russia, Germany
- 2020 - U.S., Brazil, France, Greece

2020 Tops List of Top 10 Enforcement Actions





2020 Enforcement Updates

GOLDMAN SACHS

- Relating to the 1MDB scandal
 - \$1.6 billion in bribes
- U.S. Company and Malaysian subsidiary fined in the U.S.
- Largest FCPA fine in history
 - Criminal penalty: \$2.3 billion (DOJ)
 - Disgorgement: \$606.3 million (SEC)
 - Civil penalty: \$400 million (SEC)
- Violation
 - Conspiracy to violate the anti-bribery provisions
 - Violation of anti-bribery, books and records and internal accounting provisions



2020 Enforcement Updates

GOLDMAN SACHS

- Other International Related Actions
 - UK
 - Singapore
 - Malaysia
 - Hong Kong
- Individual Responsibility
 - Tim Leissner
 - Ng Chong Hwa



2020 Enforcement Updates

AIRBUS SE

- Global fine of almost \$4 billion
 - DOJ – \$2.09 billion criminal penalty
 - DPA with DOJ for \$582.4 million (credit of \$1.8 billion)
 - \$294 million for FCPA
 - \$232.7 million for ITAR
 - State Department
 - Settlement for \$10 million for Arms Export Controls Act and ITAR
 - French Parquet National Financier- \$2.3 billion
 - UK Serious Fraud Office- \$1.09 billion



2020 Enforcement Updates

AIRBUS SE

- Violations
 - Conspiracy to violate the anti-bribery provisions of the FCPA
 - Conspiracy to violate ITAR
- Mitigating factors and credits
 - No credit for voluntary self-disclosure for FCPA
 - Credit for voluntary self-disclosure for ITAR violations
 - Cooperation credit for ITAR and FCPA
 - Remediation credit
 - Freeze third-party payments
 - Termination of contractual relationships
 - Enhanced third-party due diligence

2020 Enforcement Trends by Region

COMPANIES HQ

- U.S. (Goldman, Sargeant Marine, Herbalife)
- U.S./Japan (Beam Suntory)
- Brazil (J&F Investimentos)
- France (Alcon, Airbus)
- Greece, Switzerland (Novartis)

COMPANIES' CONDUCT

- Malaysia, Abu Dhabi (Goldman)
- Brazil (Investimentos)
- Brazil, Venezuela, Ecuador (Sargeant Marine)
- China (Herbalife, Airbus)
- Vietnam (Alcon)
- Greece (Alcon)
- India (Beam Suntory)



INDIVIDUALS

- U.S. adoption scheme in Uganda and Poland
- Panama bribes relating to Odebrecht
- Alstom executives bribing Indonesian officials
- PdVSA related bribes
- Barbados former MP in scheme to launder bribes
- PetroEcuador Officials bribed



Future Enforcement Trends

- LATIN AMERICA ?
- ASIA ?

Guidance Updates

June 2020 Evaluation of Corporate Compliance Program Updates



- Limited revisions to April 2019 but clear emphasis on:
 - Continuous improvements/testing/assessing
 - Use of data
 - Importance of third-party due diligence (ongoing)

July 2020 FCPA Resource Guide Updates



- Continued incentivization to:
 - Self-report
 - Remediate during the investigation
 - Cooperate
- Incorporated Anti-Piling On Policy (SEC, DOJ and foreign authorities coordinated action)
- Additional monitor guidance

July 2020 FCPA Resource Guide Updates



- Cited new relevant case law, clarifications and guidance:
 - SoL of 5 years for AB offenses and 6 years for accounting provisions
 - Mens rea requirement
 - M&A Successor Liability
- Continued focus on compliance programs:
 - Importance of third-party due diligence (ongoing)
 - Need for strong internal controls

Enforcement Actions Takeaways

2020 FCPA Enforcement Actions – Key Takeaways



- Increasing international cooperation
- Increasing cases of individual criminal liability for FCPA conduct
- Increasing penalties
- Economic sanctions, exports and AML are intertwined with FCPA enforcement actions
- Continued focus on third parties

FCPA Compliance Takeaways– Actions Companies Can Take Now



- Review policies and procedures to adapt to current events
- Conduct risk assessments to identify new risks posed by the pandemic
- Implement urgent or expedited due diligence policies when necessary to avoid lack of due diligence
- Adapt due diligence processes to current events
- Send reminders of the company's avenues to denounce potential violations

FCPA Compliance Takeaways– COVID-19



- Importance of virtual “face to face” meetings enhancing and emphasizing compliance culture
- Understand/learn to use your available data
- IT tools for internal investigations, compliance enforcement, and training
- AI for document review, on-boarding, ongoing due diligence, etc.

Questions?



Antitrust / Competition
Compliance Programs
Government Program Fraud,
False Claims, and Qui Tam
Litigation
Trade Secrets
White Collar, Regulatory
Defense & Investigations

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Pam is a seasoned white collar and defense attorney, concentrating her practice on FCPA and global investigations. She has led numerous global investigations for multinational organizations spanning several continents, and has had the rare honor of being appointed three times by the U.S. government to serve as an independent FCPA monitor and consultant. Her uniquely global perspective gives her the insight to aid companies in taking proactive, appropriate steps to minimize litigation and enforcement risk.

Pam concentrates her practice on FCPA, global investigations, and a range of other civil and criminal defense matters. With particularly deep experience in the health care industry, she helps companies navigate a wide array of claims and issues—including anti-corruption, off-label marketing, and financial fraud. Clients rely on Pam's expertise in these areas to design and implement measures to minimize litigation and enforcement risk.

Pam is head of the firm's FCPA & Anti-Corruption team, and is a seasoned white collar and regulatory defense attorney, with a particular focus on FCPA and global investigations. She has led numerous investigations for multinational organizations throughout Asia, South America, Central America, Europe, South Africa, and North America. Pam has had the rare honor of being appointed three times by the U.S. government to serve as an independent FCPA monitor and consultant, giving her a uniquely global perspective which can aid companies in taking proactive, appropriate steps to minimize litigation and enforcement risk, and potentially avoid monitorship.



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Mariana advises clients on U.S. and European economic sanctions, antimony laundering and anti-bribery/anti-corruption laws and regulations. Mariana also has extensive experience in conducting FCPA and AML internal investigations and participating in international commercial arbitrations. Her civil and common law legal experience and her multilingual skills make her an ideal lawyer to represent and advise clients on international matters.

Mariana Pendás is a member of Winston & Strawn's White Collar, Regulatory Defense & Investigations Practice in the firm's Washington, D.C. office. Mariana is a dual qualified lawyer in Spain and New York.

Mariana's background and experience in civil and common law helps multinational clients to navigate U.S. and European economic sanctions, as well as antimoney laundering and anti-corruption /anti-bribery laws and regulations. Mariana's practice has a special focus on Latin America and she has been recognized as a "Rising Star" and named to "Top 100 Female Lawyers" for international trade matters and international arbitration by *Latinvex*. She assists U.S. clients on various aspects of U.S. sanctions, including the exploration of the Cuban market, U.S. Venezuela related sanctions, and counter narcotics trafficking in Mexico. In addition, she was the lead associate in an FCPA internal investigation relating to a multinational company subsidiary in Argentina.

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