

STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ENTITLED

“EXAMINING ENFORCEMENT OF THE FOREIGN

CORRUPT PRACTICES ACT”

PRESENTED

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I. INTRODUCTION

Chairman Specter, Ranking Member Graham, and distinguished Members of the Subcommittee: Thank you for the opportunity to appear before you to discuss the Department of Justice's enforcement of the Foreign Corrupt Practices Act (FCPA). The investigation and prosecution of transnational bribery is an important priority for the Department of Justice, and we have been hard at work. In particular, over approximately the last two years, we have substantially increased the number of our prosecutions against corporations and individual executives, and we have collected more in criminal fines than in any other period in the history of our FCPA enforcement.

We are proud of our accomplishments, and others have taken note as well. On October 20, 2010, following a rigorous official review, the Organisation for Economic Co-operation and Development (OECD) applauded the Departments of Justice, Commerce and State, and the SEC for our collective efforts in the fight against foreign bribery. In its official report, the OECD's Working Group on Bribery in International Business Transactions noted that “[t]he United States has investigated and prosecuted the most foreign bribery cases among the Parties to the Anti-Bribery Convention.” The Working Group's report further stated that:

The creation of a dedicated FCPA unit in the SEC, continued enforcement of books and records and internal controls provisions by the DOJ and SEC, increased focus on the prosecution of individuals and the size of sanctions have had a deterrent effect and, combined with guidance on the implementation of these standards, has raised awareness of U.S. accounting and auditing requirements among all issuers.

In short, the OECD's report makes clear that the United States' success in enforcing the FCPA has far outpaced any other country's enforcement of its foreign bribery laws, and we are working with our trading partners to encourage them to enhance their efforts. We remain

committed to this effort, and we are grateful for the Subcommittee’s interest and to the Chairman for inviting the Criminal Division to discuss the Department’s progress.

II. PROSECUTIONS

FCPA enforcement is as strong as it has ever been. And we believe it is getting stronger. In the past year alone, the Department of Justice has imposed the most criminal penalties in FCPA-related cases in any single 12-month period – well over \$1 billion. During that time, we have prosecuted and entered into corporate resolutions with a variety of corporate entities, including BAE Systems plc, Daimler AG, Technip S.A., Snamprogetti Netherlands B.V., Alliance One International, Inc., Universal Corporation, Panalpina World Transport, Transocean Inc., Tidewater Marine International Inc., Shell Nigeria Exploration and Production Company, Noble Corporation, and Pride International Inc., to name a few.

But that is only part of the story: we are also vigorously pursuing individual defendants who violate the FCPA, and we will not hesitate to seek jail terms for these offenders when appropriate. The Department has made the prosecution of individuals a critical part of its FCPA enforcement strategy. We understand well that this is an important and effective deterrent. Paying large criminal penalties cannot be viewed, and is not, simply “the cost of doing business.” Corporate prosecutions and resolutions do not and cannot provide a safe haven for corporate officials, and every agreement resolving a corporate FCPA investigation explicitly states that it provides no protection against prosecution for individuals.

Since 2009, the Department has charged over 50 individuals with FCPA violations. Today, there are approximately 35 defendants awaiting trial on FCPA charges in the United States – in Houston, Miami, Los Angeles, Santa Ana, and Washington, D.C. By contrast, in 2004, the Department had charged only two individuals with FCPA violations.

Several recent FCPA prosecutions against individuals evidence the emphasis the Department has placed on this component of its enforcement strategy.

- On January 19, 2010, indictments were unsealed against 22 defendants in the military and law enforcement products industry. These indictments arose out of the Department's most extensive use ever of undercover law enforcement techniques in an FCPA investigation, and they represent the single largest prosecution of individuals in the history of the Department's FCPA enforcement efforts.
- In December 2009 and early 2010, eight individual defendants were charged in connection with an alleged scheme by U.S. telecom companies to bribe former officials at Haiti Teleco, Haiti's state-owned national telecommunications company. Certain of the defendants allegedly paid more than \$800,000 to shell companies to be used for bribes to Haitian officials. In addition, the defendants are alleged to have created false records claiming that the payments were for "consulting services" that were never intended or performed. The charged individuals include two executives of a Miami-Dade County-based telecommunications company, the president of Florida-based Telecom Consulting Services Corporation, and two former Haitian government officials. One defendant who pleaded guilty received a sentence of 57 months' imprisonment and another received a sentence of 48 months' imprisonment. Trial is set to begin on November 29 in the Southern District of Florida for the four remaining defendants on FCPA and other charges.
- Between late 2008 and July 2010, the Department has aggressively pursued individuals and related corporate entities in the *Kellogg Brown & Root* (KBR) matter. For example, on September 3, 2008, Jack Stanley, KBR's former CEO, pleaded guilty in the Southern District of Texas to a two-count criminal information charging him with conspiracy to violate the FCPA and conspiracy to commit mail and wire fraud. In doing so, Stanley admitted, among other things, that he authorized the hiring of two company agents to pay bribes to a range of Nigerian government officials to assist the joint venture in obtaining the contracts. As part of his plea agreement, Stanley agreed to a prison sentence of 84 months, subject to a potential reduction for cooperation with our ongoing investigations.
- On August 6, 2010, the Department again achieved success against individuals and related corporate parties in the *Alliance One* matter. Alliance One International Inc., a global tobacco leaf merchant headquartered in Morrisville, North Carolina, entered into a non-prosecution agreement with the Department's Fraud Section and the U.S. Attorney's Office for the Western District of Virginia, and two of its foreign subsidiaries pleaded guilty to FCPA violations and were sentenced to pay criminal fines totaling \$9.25 million for violations of the FCPA arising out of corrupt payments made to foreign officials in Kyrgyzstan and Thailand. In addition, Bobby Jay Elkin, Jr., a former Kyrgyzstan country manager for Alliance One International Inc., pleaded guilty to a one-count criminal information charging him with conspiracy to violate the FCPA. During his plea hearing, Elkin admitted to conspiring to make

corrupt payments totaling more than \$3 million to foreign officials in Kyrgyzstan from 1996 through 2004 in order to, among other things, obtain export licenses and gain access to government-owned tobacco processing facilities.

- Between November 2009 and October 2010, the Department charged both corporate entities and individuals for violations of the FCPA in the *ABB Ltd.* matter and the related *Lindsey Manufacturing Company* matter. For example, in the *ABB Ltd.* matter, in September 2009, an *ABB Ltd.* subsidiary pleaded guilty to FCPA violations, and *ABB Ltd.* entered into a deferred prosecution agreement concerning a second subsidiary's FCPA violations. As a result of these dispositions, *ABB Ltd.*, and the subsidiary that pleaded guilty paid the United States criminal fines totaling \$19 million. In addition, in November 2009, the principal of a Mexican company that served as a sales representative in connection with one of the charged *ABB Ltd.* subsidiary's criminal conduct, pleaded guilty in the Southern District of Texas for his role in the conspiracy. In the *Lindsey Manufacturing Company* matter, in October 2010, the Department indicted *Lindsey Manufacturing Company*, the company's CEO and CFO, and two principals of a Mexican company that served as *Lindsey Manufacturing* sales representative for their alleged roles in a conspiracy to pay bribes to Mexican government officials at a state-owned utility company.

These cases and others demonstrate the Department's commitment to vigorously prosecuting individuals and, where appropriate, related corporate entities for FCPA violations and related offenses.

III. CHALLENGES AND FOREIGN COOPERATION

While the prosecution of individuals remains a crucial component of the Department's FCPA enforcement program, it is worth noting the substantial challenges involved in these prosecutions. Often they involve jurisdictional hurdles, foreign evidence and witnesses, foreign prosecutions, and issues with the relevant statute of limitations. Thus, more than ever before, we are working to increase our cooperation with our foreign counterparts. Our participation in the OECD's Working Group on Bribery, for example, has helped us to foster closer relationships with some of our largest trading partners. These partnerships have yielded important results. As noted, last March, the Department resolved a corruption investigation of BAE Systems plc by

securing a guilty plea and a \$400 million criminal fine. In so doing, the Justice Department benefited substantially from its cooperation with the U.K.’s Serious Fraud Office.

The same is true of the Innospec case, also resolved in March 2010, in which Innospec Inc. pleaded guilty and agreed to pay a \$14.1 million criminal fine. Partnerships like the one we have with the Serious Fraud Office are critical to our transnational approach to combating foreign bribery, and we expect to rely on our foreign partners in future cases, as well as to assist them in bringing their own prosecutions.

The *Siemens* matter also helps illustrate the role that other countries can and should play in connection with our international anti-corruption efforts. That matter involves bribery prosecutions in both the United States and in Germany. There, in December 2008, Siemens Aktiengesellschaft (Siemens AG), a German corporation, pleaded guilty in the United States to violations of the FCPA. Siemens subsidiaries in Argentina, Bangladesh, and Venezuela, each pleaded guilty to separate FCPA violations. In connection with these guilty pleas Siemens agreed to pay a criminal fine of approximately \$448.5 million and each of the subsidiaries agreed to pay criminal fines of \$500,000 for a combined total of \$450 million.

In addition, German authorities have charged a number of Siemens executives with bribery related offenses, including seven executives of a Siemens’ subsidiary charged last year with bribery and money laundering in connection with a 1990s contract with the Greek telecommunications company. Germany’s aggressive enforcement activity in this matter reveals how the Department must coordinate with other nations and take into account their interests and sovereignty in this area.

IV. CORPORATE RESOLUTIONS

Let me address briefly the use of deferred and non-prosecution agreements in our FCPA practice. We believe that these kinds of resolutions are vital to the Department's efforts. So-called "DPAs" and "NPAs" provide the Department with appropriate alternatives to outright prosecution or declination, and the Department has used them effectively for many years. They provide an effective means to ensure that corporations make compliance enhancements and take affirmative remedial actions. They also help to ensure that corporations provide crucial cooperation in ongoing criminal investigations of the companies themselves, potential individual defendants, and other companies in the same industry.

There are still other benefits, including benefits to the public. For example, corporate agreements can result in the resolution of matters more quickly than other dispositions because such issues will have been fully negotiated without protracted and costly litigation. They also allow the Department to investigate and discover other criminal conduct more quickly than would otherwise be possible; and generally they require the relevant corporation to initiate or substantially improve their ethics and compliance programs. They also provide guidance to other companies when they are made public.

Further, these agreements, in appropriate cases, permit the Department to achieve important results for the public without subjecting companies to collateral consequences of prosecution and conviction. Such collateral consequences can include dissolution of the company, loss of jobs, elimination of beneficial products or services from the marketplace, and substantial shareholder losses.

It is also important to note that the Department's Principles of Federal Prosecution of Business Organizations prescribe the appropriate circumstances under which the Department

may enter into these agreements. Thus, the Department enters into these agreements only after careful consideration of these guidelines and the issues discussed above.

V. CONCLUSION

While FCPA enforcement has always been important, it is particularly critical today. The World Bank estimates that more than \$1 trillion in bribes is paid each year, which amounts to approximately 3% of the world economy. Some experts have concluded that these bribes amount to a 20% tax on foreign investment.

As Attorney General Holder explained to an audience earlier this year, and as discussed above, bribery in international business transactions weakens economic development; it undermines confidence in the marketplace; and it distorts competition. Thus, FCPA enforcement is vital to ensuring the integrity of the world's markets and ensuring sustainable development globally. The Department's FCPA enforcement program serves not only to hold accountable those who corrupt foreign officials, but in doing so it also serves to make the international business climate more transparent and fair for everyone. FCPA enforcement both roots out foreign corruption and deters it from taking hold in the first place.

Some have suggested that FCPA enforcement puts American businesses at a competitive disadvantage vis-à-vis their foreign counterparts. We believe the opposite: American companies do not need to engage in foreign bribery to be competitive. Many U.S. companies have told us that they use the FCPA as a shield against solicitation by foreign officials, telling them under our laws they cannot make such bribe payments. Moreover, the Department does not only prosecute U.S. companies and individuals under the Act. Indeed, over the last five years, more than half of the corporate FCPA resolutions have involved foreign companies or U.S. subsidiaries of foreign companies.

In addition, the United States, through its FCPA enforcement efforts, leads by example, and other countries are following. For instance, the United Kingdom passed a landmark anti-bribery law earlier this year, sending a clear message to the British business community that the U.K will not tolerate bribery in international commerce. As another example, Germany and the United States worked together closely in investigating and then successfully resolving the case against Siemens. Moreover, the OECD review discussed earlier demonstrates the importance of this issue in the international community and revealed the United States as a leader in this area.

The Department of Justice along with its partners at the Departments of Commerce and State have put the issue of fighting corruption squarely on the international agenda and are working to get our trading partners to commit to joining the fight. At the OECD, in the G-20, in the United Nations, and through other efforts, we are working to get other countries to uphold our shared responsibility to eliminate corruption in international business.

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In conclusion, we at the Department of Justice, together with our partners at other federal agencies and around the world, have made combating transnational bribery a significant priority. We have devoted substantial resources to vigorously enforcing the FCPA, and this effort has support from the highest levels of the Department. We look forward to working with Congress as we continue our important mission to prevent, deter, and prosecute foreign corruption.