

Red Notice

A monthly update on global investigations and prosecutions

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ANTICORRUPTION DEVELOPMENTS

DOJ Files Superseding Indictment in Haitian Port Corruption Plot

On October 30, 2018, the U.S. Department of Justice (DOJ) filed a superseding indictment in the District of Massachusetts against Roger Boncy charging him with one count of conspiracy to violate the U.S. Foreign Corrupt Practices Act (FCPA), along with one count of violating the Travel Act, and one count of conspiracy to commit money laundering. Boncy is a dual citizen of Haiti and the U.S., who resides in Madrid, Spain. The DOJ alleges that Boncy participated in a scheme to make corrupt payments to government officials of the Republic of Haiti related to a \$84 million port development project. Boncy's alleged co-conspirator, Joseph Baptiste, a Haitian-born, retired U.S. Army colonel, was charged in the initial indictment in October 2017, which was previously covered by the Red Notice [here](#). Baptiste is scheduled to go to trial on December 3, 2018.

The superseding indictment alleges that the co-conspirators solicited improper payments from undercover agents who were posing as potential investors for the port development project. The agents recorded a meeting in Boston where Boncy and Baptiste told agents that they would launder money to Haitian government officials through a Maryland-based non-profit entity controlled by Baptiste. Additionally, the superseding indictment details intercepted telephone calls where Baptiste and Boncy discussed making additional improper payments to a government official's aide in order to obtain authorization for the project.

More information

- [DOJ Press Release](#)
- [Indictment](#)
- [FCPA Blog](#)
- [Law 360](#)

[Former Adidas Executive Convicted in College Basketball Corruption Probe](#)

On October 24, 2018, in the Southern District of New York (SDNY), after a three-week trial and over two days of jury deliberations, three individuals were convicted in the government's ongoing investigation into corruption surrounding the National Collegiate Athletic Association (NCAA). James Gatto a former Director of Global Basketball Sports Marketing for Adidas was found guilty of three counts of wire fraud, along with Merl Code, a former Adidas consultant, and Christian Dawkins, an aspiring NBA agent, who were each convicted of two counts of wire fraud. The government argued at trial that the defendants paid top college basketball recruits, in violation of the NCAA's rules, thereby defrauding other universities who awarded scholarships to the recruits. In a statement, deputy U.S. Attorney Robert S. Khuzami praised Wednesday's verdict: "The defendants not only deceived universities into issuing scholarships under false pretenses," Khuzami said, "they deprived the universities of their economic rights and tarnished an ideal which makes college sports a beloved tradition by so many fans all over the world."

Multiple universities have also been ensnared in this investigation, with the University of Maryland specifically receiving a subpoena for all communications with Christian Dawkins, as previously covered in the [Red Notice](#). Although this is the first trial arising from the government's investigation into the NCAA, there are two more trials stemming from the same investigation scheduled for 2019. The sentencing for all three defendants is set for March 5, 2019.

More information

- [DOJ Press Release](#)
 - [Reuters](#)
 - [Washington Post](#)
-

SEC Investigative Report Encourages Companies to Address Cyber Fraud with Internal Accounting Controls

On October 16, 2018, the Securities and Exchange Commission (SEC) issued a Report of Investigation reminding public companies of the importance of considering cyber threats when creating internal accounting controls. The report detailed an SEC investigation into the internal accounting controls of nine companies that were victims of "business email compromises"—a form of cyber fraud in which an attacker convinces an employee to send money to the perpetrator's account by posing as a company executive or vendor. According to the FBI, cyber fraud involving this type of scheme has led to over \$5 billion in damages since 2013.

In many of the cases, employees failed to follow or did not fully understand their company's internal accounting controls—such as dual-authorization requirements and senior-level payment authorization requirements—which could have prevented the payments from being made. Although the SEC did not charge the nine companies, citing the books and records provision of the FCPA, it stressed the duty that all public companies have to update internal accounting controls and urged companies to put in place controls "sufficient to provide reasonable assurances" that investor's assets will be protected from new risks arising from cyber fraud.

More information

- [SEC Press Release](#)
 - [SEC Report](#)
 - [Wall Street Journal](#)
 - [Akin Gump Client Alert](#)
-

Department of Justice Announces New Guidance Regarding Corporate Monitors

On October 11, 2018, the U.S. Department of Justice (DOJ) released new guidance on the use of corporate monitors in a memorandum by Assistant Attorney General Brian

Benczkowski. The guidance follows a broader pledge by Deputy Attorney General Rod Rosenstein to reevaluate numerous corporate compliance policies. Benczkowski detailed his memorandum in an address the following day to the NYU Program on Corporate Compliance and Enforcement.

Benczkowski's memo and speech shed light on the factors to be considered before imposing a monitor and how monitors are selected. The factors to be considered in determining whether a monitor should be imposed include: (1) the nature of the underlying conduct; (2) the pervasiveness of the wrongdoing; (3) the projected financial costs and the potential burden on business operations; (4) any remedial measures taken by the company; and (5) whether a new compliance program would be successful. In terms of process, the memorandum introduces certain required terms for inclusion in monitorship agreements and establishes a new three-member standing committee on the selection of monitors.

More information

- [2018 Benczkowski Remarks](#)
 - [2018 Benczkowski Memo](#)
 - [The Wall Street Journal](#)
 - [FCPA Blog](#)
-

U.K. Charges Third Employee in Seismology Corruption Case

On September 28, 2018, the U.K. Serious Fraud Office (SFO) charged a third employee of Güralp Systems Ltd., a U.K.-based seismology engineering firm, as part of an ongoing probe into the company's involvement in a corrupt payment scheme. Heather Pearce, the former sales director, was charged with conspiracy to bribe a foreign official. As previously covered by [Red Notice](#), SFO charged Güralp Systems' founder and former managing director in August 2018 for allegedly making improper payments to Heon-Cheol Chi, a South Korean government official who served as the former director of the South Korean Institute of Geoscience and Mineral Resources (KIGAM). On July 18, 2017, Chi was convicted for laundering bribes paid to him through U.S. banks.

As explained by [Red Notice](#) at the time, the U.S. Department of Justice (DOJ) issued Güralp Systems a declination notice in August 2018 in light of the parallel SFO investigation; Güralp Systems' voluntary disclosure of the misconduct; its cooperation with DOJ's investigation, including in the prosecution of Chi; and the company's significant remedial efforts.

More information

- [Wall Street Journal](#)
 - [FCPA Blog](#)
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Two Former Oil Executives Sentenced for FCPA Violations

On September 28, 2018, two former executives of Dutch oil services firm SBM Offshore, N.V. (SBM) received prison sentences for making corrupt payments to foreign officials in three different countries, in violation of the Foreign Corrupt Practices Act (FCPA). Former SBM CEO Anthony Mace was ordered to pay a fine totaling \$150,000 and received a 36-month sentence. Robert Zubiate, a marketing and sales executive previously at SBM Offshore USA (SBM USA), received a sentence of 30 months and was ordered to pay \$50,000.

Both sentences follow guilty pleas made by the executives in November 2017, as previously covered by [Red Notice](#). Each pleaded guilty to one count of conspiracy to violate the FCPA due to their involvement in a scheme to funnel improper payments to officials at Petroleo Brasileiro S.A. using a third party in order to obtain contracts for SBM. The pair also admitted to making improper payments to officials in Angola and Equatorial Guinea. SBM and SBM USA previously resolved U.S., Brazilian, and Dutch investigations

into this misconduct, paying a total of \$582 million in financial penalties to various government authorities.

More information

- [DOJ Press Release](#)
 - [Wall Street Journal](#)
 - [FCPA Blog](#)
-

SEC Charges Medical Device Company with Violation of FCPA

On September 28, 2018, the SEC charged Stryker Corp. (“Stryker”), the Michigan based medical device company, with violating the FCPA's books, records and internal accounting controls provisions. On the same day, it was announced that Stryker had settled the charges by paying a \$7.8 million penalty. Stryker is also required to retain an independent compliance consultant. The settlement arises from the failure of Stryker’s subsidiaries in India, China and Kuwait to comply with written accounting controls and anti-corruption policies and procedures intended to prevent improper payments.

Previously, in October 2013, Stryker paid a \$3.5 million penalty, \$7.5 million in disgorgement, and more than \$2.2 million in interest for other violations of the books, records and internal accounting controls provisions of the FCPA.

More information

- [SEC Press Release](#)
 - [SEC Order](#)
 - [FCPA Blog](#)
-

Anticorruption Spotlight: World Bank Releases Annual Report on Global Sanctions

On October 3, 2018, the World Bank issued its first joint sanctions report, covering enforcements and investigations by the Integrity Vice Presidency (INT), the Office of Suspension and Debarment (OSD) and the Sanctions Board during FY18. During this period, the INT received more than 1,400 complaints resulting in the opening of 68 new investigations. The World Bank debarred a total of 78 individuals and corporate entities, 27 of which involved corrupt practices. Also, five additional corporate entities were subjected to conditional non-debarment.

More information

- [World Bank Report](#)
 - [World Bank Press Release](#)
-

Anticorruption Spotlight: SEC Issues Whistleblower Determinations

On October 30, 2018, the Securities and Exchange Commission (SEC) announced that it would deny claims for whistleblower awards in two separate enforcement actions. In both cases, the SEC determined that the whistleblowers submitted information that was not used by the SEC in connection with the successful enforcement of the cases. The whistleblowers submitted information after the SEC had already initiated investigations into the relevant underlying conduct—in one case, as much as one year after the SEC had reached an agreement in principle on the terms of a proposed settlement with the subject company—and the submitted information did not present the SEC with new information of potential misconduct.

The SEC has made a total of 59 whistleblower awards since it first began the practice in 2012. Awards totaling more than \$326 million have been paid for whistleblower information.

Whistleblower awards—provided for under the Dodd-Frank Act—can range from 10 percent to 30 percent of the money collected when monetary sanctions from a successful enforcement exceed \$1 million. Notices of Covered Actions—enforcement actions with sanctions greater than \$1 million—are posted on the SEC’s website, and claims must be submitted within 90 days of such posting.

More information

- [SEC Press Release and Order](#)
- [SEC Press Release and Order](#)

EXPORTS, SANCTIONS AND CUSTOMS ENFORCEMENTS

JPMorgan Chase Settles Alleged Violations of U.S. Sanctions for \$5.3 Million and Receives a Finding of Violation

On October 5, 2018, the Office of Foreign Assets Control (OFAC) announced a settlement with JPMorgan Chase Bank, N.A. (JPMorgan Chase) regarding alleged violations of the Cuban Assets Control Regulations, the Iranian Transactions and Sanctions Regulations, and the Weapons of Mass Destruction Proliferators Sanctions Regulations. According to OFAC’s announcement, JPMorgan Chase agreed to pay \$5.2 million to settle allegations that between January 2008 and February 2012 it processed 87 “net settlement payments” (i.e., a payment to resolve billing issues among airlines and other airline industry participants) that involved interests attributable to eight airlines that were, at various times, subject to U.S. sanctions. Such interests accounted for only 0.14 percent of the overall transaction value of these payments.

Separately, OFAC issued a Finding of Violation to JPMorgan Chase regarding violations of the Foreign Narcotics Kingpin Sanctions Regulations and the Syrian Sanctions Regulations. Specifically, OFAC determined that between August 2011 and April 2014, JPMorgan Chase processed 85 transactions and maintained eight accounts on behalf of six customers who were identified on OFAC’s List of Specially Designated Nationals and Blocked Persons (SDN List) at that time. Although the bank screened these entities, the screening system used apparently failed to identify these matches due to flaws in its logic. OFAC determined that JPMorgan Chase voluntarily disclosed the violations, and that the violations constitute a non-egregious case.

More information

- [OFAC Settlement Announcement](#)
- [OFAC Web Notice](#)

Commerce Temporarily Denies Export Privileges for Estonian and Russian Companies and Related Persons

On October 2, 2018, the Department of Commerce’s Bureau of Industry and Security (BIS) Export Enforcement (EE) issued an order temporarily denying the export privileges of two Estonian companies, Eastline Technologies OU and Adimir OU; their co-owners; and an affiliated Russian company, Real Components. Eastline describes itself as a distributor of electronic parts and components, computer-related products, industrial personal computers and embedded systems, equipment for industrial automation and other state of the art solutions. The other companies identified appear to be in related businesses.

According to the order, the Estonian companies and their owners engaged in knowing violations of the Export Administration Regulations (EAR) relating to the procurement of U.S.-origin items subject to the EAR for export to Russian customers, primarily Real Components Ltd., via transshipment through Estonia and Finland. The parties provided false or misleading information to U.S. suppliers and the U.S. Government regarding the ultimate consignee and final destination of the items. The parties also designed their exports to conceal or obscure the destinations, end users and/or end uses of the U.S.-

origin items they procured, including items on the Commerce Control List.

As a result of the order, the named parties may not apply for, obtain or use an EAR license; may not carry on negotiations related to an item subject to an EAR license; and may not benefit from any transaction subject to the EAR.

More information

- [Order](#), as published in the Federal Register
-

Treasury Sanctions Singaporean Companies for Evasion of North Korea Sanctions

On October 25, 2018, the Department of the Treasury's OFAC announced designations of Singaporean businessman Tan Wee Beng's companies, Wee Tiong (S) Pte Ltd and WT Marine Pte Ltd, as well as two vessels tied to the companies. The designations were in connection with a conspiracy to evade the North Korea sanctions program by engaging in money laundering, the counterfeiting of goods or currency, bulk cash smuggling, narcotics trafficking and other illicit economic activity that involved or supported the government of North Korea.

According to OFAC, since 2011, Tan Wee Beng conspired within his companies to fulfill commodities contracts for North Korea worth several million dollars. The conspirators allegedly made knowing efforts to evade financial sanctions on North Korea by hiding payment origins and structuring transactions to avoid scrutiny. In at least one instance, Tan Wee Beng orchestrated a direct bulk cash payment with a North Korean person.

The Department of Justice unsealed related criminal charges against Tan Wee Beng alleging bank fraud, money laundering and defrauding the United States.

More information

- [OFAC announcement](#)

EXPORTS, SANCTIONS AND CUSTOMS DEVELOPMENTS

BIS Adds Fujian Jinhua to Entity List

On October 30, 2018, the BIS added Fujian Jinhua Integrated Circuit Company Ltd. (Jinhua) to the Entity List, designating Jinhua as "reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States." Specifically, BIS notes that Jinhua has nearly obtained substantial production capacity for dynamic random access memory integrated circuits (DRAMs), which are essential components of U.S. military systems. BIS deemed these production capabilities a threat to the long-term economic viability of U.S. DRAM suppliers.

As a result of the designation, U.S. businesses will need to satisfy additional licensing requirements and most license exceptions will not be available for transactions with Jinhua, including exports, reexports and transfers of commodities, software or technology subject to the EAR. The license review policy will be a presumption of denial.

More information

- [Federal Register Rule](#)
 - [Commerce Press Release](#)
-

OFAC Extends Ukraine-Related General Licenses Involving EN+, RUSAL and GAZ Group

On October 12, 2018, OFAC announced a further extension of the expiration date of certain Ukraine-related General Licenses (GLs) involving EN+ Group PLC (EN+) and

United Company RUSAL PLC (RUSAL). New GLs 13E, 14B and 16B amend prior versions to authorize certain transactions with EN+ and RUSAL through December 12, 2018. On October 19, 2018, OFAC announced the same extension for GLs 13F and 15A regarding certain transactions involving GAZ Group. The GLs relate to OFAC's April 6, 2018 designations of seven prominent Russian businessmen and 12 companies that they own or control.

More information

- [OFAC Press Release](#) (EN+ and RUSAL)
 - [OFAC Web Notice](#) (EN+ and RUSAL)
 - [OFAC Web Notice](#) (GAZ Group)
 - [Red Notice - September 2018](#)
 - [Red Notice - May 2018](#)
 - [Red Notice - April 2018](#)
-

Client Alert: FinCEN Releases Advisory for Banks, MSBs on Potentially Illicit Transactions with Iran

On October 11, 2018, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) released an advisory to help U.S. financial institutions better detect potentially illicit transactions related to Iran. The advisory describes the methods by which Iran attempts to access the international financial system and avoid U.S. sanctions and other financial controls. These methods include the use of Central Bank of Iran (CBI) officials listed on the SDN List, exchange houses, front and shell companies to procure goods and services, deceptive practices related to shipping, precious metals, and virtual currency.

The advisory also identifies certain red flags indicative of a transaction's potential ties to Iran. These include transactions involving illicit activity by the CBI or its officials, illicit activity through exchange houses, use of procurement networks by Iran-linked parties, illicit procurement of aircraft parts, Iran-related shipping companies' access to the financial systems, suspicious funds transfers and the use of virtual currency.

FinCEN notes that financial institutions should expect regulators to increase scrutiny of certain transactions, and compliance obligations generally, following the United States' withdrawal from the Joint Comprehensive Plan of Action.

More information

- [Akin Gump Client Alert](#)
 - [Treasury Press Release](#)
 - [FinCEN Advisory](#)
-

Client Alert: CFIUS Pilot Program Expands Jurisdiction and Imposes Mandatory Reporting on Certain Industries

On October 10, 2018, the Committee on Foreign Investment in the United States (CFIUS) announced a pilot program that implements significant provisions of the Foreign Investment Risk Review Modernization Act (FIRRMA). The pilot program expands the scope of CFIUS review to include certain noncontrolling investments relating to critical technology companies and requires mandatory declarations for certain controlling and noncontrolling investments in such companies.

The pilot program becomes effective November 10, 2018. After an initial grace period, parties must file with CFIUS 45 days in advance of closing a transaction subject to the program. CFIUS may impose civil penalties up to the value of the transaction for failing to file.

More information

- [Akin Gump Client Alert](#)
 - [Treasury press release](#)
 - [Federal Register interim rule](#)
-

State Department Revises Certain Sections of the ITAR

On October 4, 2018, the State Department issued an interim final rule revising several entries on the United States Munitions List (USML) to remove items that the Department determined do not warrant continued inclusion, clarifying control text for certain categories, and removing certain notification requirements from the International Traffic in Arms Regulations (ITAR). In particular, the rule clarifies the scope of USML Categories IV (Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines), V (Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents), VIII (Aircraft and Related Articles), XI (Military Electronics) and XV (Spacecraft and Related Articles).

In addition, the rule eliminates the requirement in 22 C.F.R. § 123.22(b)(3)(i) and (c)(2) to return licenses for technical data to the Department of State, because the Department determined that it can collect this information via other means.

More information

- [Federal Register interim final rule](#)
-

Client Alert: USMCA Raises Canada's and Mexico's De Minimis Thresholds, but the Reciprocal Treatment Provision Poses Risks to U.S. Express Carriers and Consumers

The new United States-Mexico-Canada Agreement (USMCA)—announced on Sunday, September 30, 2018—would increase Mexico's and Canada's *de minimis* thresholds for express shipments to \$117 USD and \$150 CAD for duty-free entry, respectively, and \$50 USD and \$40 CAD for tax-free entry, respectively. Even with the increases, the new thresholds are significantly lower than the current U.S. *de minimis* of \$800 USD.

The new agreement would also permit the United States to decrease its statutory \$800 threshold to a reciprocal *de minimis* amount for express shipments imported from Mexico or Canada, in an amount that is no greater than the Mexican or Canadian threshold. Evidently, the United States wants this tool to entice Canada and Mexico to raise their thresholds given that shipments from other countries into the United States enjoy the benefits of the higher \$800 *de minimis*.

If indeed the United States decides to lower its *de minimis* threshold to an amount that is no greater than that of Mexico or Canada, the result would be higher costs to consumers and more regulatory barriers for express carriers, the most frequent users of *de minimis* clearance on behalf of their customers.

More information

- [Akin Gump Client Alert](#)
- [USMCA Full Text](#)

GLOBAL INVESTIGATIONS RESOURCES

- [SEC Warns Companies of Potential Internal Accounting Control Violations with Business Email Compromise](#)

WRITING AND SPEAKING ENGAGEMENTS

On November 13, [Davina Garrod](#) will be a panelist discussing “Economic Nationalism, Merger Control & National Security” at The Law Society's Competition Section Evening Seminar in London.

On November 14-15, [Jonathan Poling](#) will present on The Future of Internal Compliance Procedures in the Face of Heightened Jurisdictional Risks and Increased International Collaboration between the Enforcement Agencies and Regulators

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, compliance, cybersecurity, enforcement and policy or other international investigation and compliance topics, please contact Jaime Sheldon at +1 212.407.3026 or [email](#).

[More information](#) for lawyers in the global investigations and compliance practice.

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