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FCPA DAILY DIGEST

New FCPA Resource Guide Recaps Shifts In Law And Policy
(https://www.law360.com/whitecollar/articles/1289347/new-fcpa-resource-guide-recaps-shifts-in-law-and-policy)

Ex-Panamanian president's sons charged with money laundering for roles in Odebrecht bribery scheme (https://mlex.com/GlobalAdvisory/DetailView.aspx?cid=1205686&siteid=234)

Deutsche Bank fined $150 million by New York for failures related to Epstein, Danske Bank, FBME Bank
(https://mlex.com/GlobalAdvisory/DetailView.aspx?cid=1205748&siteid=234)

Mexican draft bill proposing changes in public acquisitions will reduce corruption, increase competition, authorities say
(https://mlex.com/GlobalAdvisory/DetailView.aspx?cid=1205506&siteid=234)

Peruvian company agrees to settle Odebrecht-related class action
(https://globalinvestigationsreview.com/article/jac/1228575/peruvian-company-agrees-to-settle-odebrecht-related-class-action)

New FCPA Resource Guide Recaps Shifts In Law And Policy
By Jody Godoy

U.S. enforcement authorities' guide to the Foreign Corrupt Practices Act recently got a revamp for the first time in eight years to reflect a plethora of recent policies and changes in the law.

Jointly published by the U.S. Department of Justice and the Securities and Exchange Commission, the guide explains the intricacies of the Foreign Corrupt Practices Act, which prohibits overseas bribery and perpetrators' attempts to erase it from a company's books.

The guide had been a key source of advice on what companies could expect from the enforcement authorities after a violation came to light. However, the document became outdated as the DOJ developed a range of policies, particularly over the last four years, seeking to flesh out and clarify its approach to enforcing the law.

Those policies include a corporate leniency program, detailed guidance on when and how to impose a corporate monitor, a policy that guides against "piling on" where other regulators are already involved and a recently tweaked rubric for evaluating corporate compliance programs.

Rather than restate the policies, the guidance includes some of their key concepts and references to them.

It also reiterates the encouragement the DOJ and SEC have tried to express towards companies that inherit corruption issues in mergers and acquisitions.

While stating that such situations may result in enforcement actions, the authorities recognized the difficulty of fully vetting a target and "the potential benefits" of mergers, such as a larger company with better compliance infrastructure helping reform the company it buys.

The new guide also reflects the Second Circuit's Hoskins ruling, which held that prosecutors cannot file FCPA conspiracy charges against

foreign nationals who would not otherwise be subject to the law.

While noting that the ruling only applies in the Second Circuit, the guide was carefully edited to remove stray references to the prosecution of co-conspirators in bribery schemes, reflecting the potential split that Hoskins created.

For example, both the old and the new versions of the guide state that "a foreign national who attends a meeting in the United States that furthers a foreign bribery scheme may be subject to prosecution," while the update removes the following line, which said that so can "any co-conspirators, even if they did not themselves attend the meeting."

Likewise, the guidance made mention of recent Supreme Court decisions Kokesh v. SEC and Liu v. SEC, which was just handed down in late June. Both decisions spoke to the boundaries for the SEC when it seeks disgorgement of tainted profits.

Other changes are due not to any shift in law but in response to arguments from the defense bar over the years, said Nathaniel Edmonds, a partner at Paul Hastings LLP who was involved in drafting the first edition of the guidance when he was at the DOJ.

"My expectation is that some of these tweaks have come from the back and forth between company counsel and DOJ and SEC in these eight years," Edmonds told Law360.

For example, the section pertaining to the law's accounting provisions notes that internal accounting controls "are not synonymous with a company's compliance program," though there may be some overlap.

"The pushback from the business and legal community has been that you cannot wrap up every violation of your internal compliance program as a criminal or even a civil accounting controls violation," Edmonds said.

The same section was also updated to note that violations of the FCPA's accounting provisions carry a six-year, rather than five-year, statute of limitations. The section now also states that in corporate cases, prosecutors must show the violation was willful.

But U.S. policy and law around foreign corruption aren't the only things that have changed over the past decade. New foreign laws, increased overseas enforcement and more cooperation between the U.S. and its counterparts are all alluded to in the updated guide.

Ex-Panamanian president's sons charged with money laundering for roles in Odebrecht bribery scheme

By MLex Staff

In Brief

MLex Summary: Two sons of former Panamanian president Ricardo Martinelli have been charged with money laundering for participating in a massive bribery scheme by Brazilian construction giant Odebrecht. Luis Martinelli Linares and Ricardo Martinelli Linares were arrested in Guatemala on a US warrant. Between roughly August 2009 and January 2014, the defendants facilitated the payment of bribes from Odebrecht to a Panama government official by taking steps that included opening and managing secret bank accounts held in the names of shell companies in foreign jurisdictions, the Justice Department said.
Statement follows. Please see attached criminal complaint.

Two Defendants Charged for Their Role in Bribery and Money Laundering Scheme Involving Former High-Ranking Government Official in Panama
Individuals Facilitated $28 Million in Bribes from Odebrecht S.A. to the Official

A criminal complaint was unsealed today in federal court in Brooklyn, New York, charging Luis Enrique Martinelli Linares (Luis Martinelli Linares) and Ricardo Alberto Martinelli Linares (Ricardo Martinelli Linares) for their roles in a massive bribery and money laundering scheme involving Odebrecht S.A. (Odebrecht), a Brazil-based global construction conglomerate.

On Dec. 21, 2016, Odebrecht pleaded guilty in the Eastern District of New York to a criminal information charging it with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) for its involvement in the bribery and money laundering scheme.

The overarching Odebrecht scheme involved the payment of more than $700 million in bribes to government officials, public servants, political parties, and others in Panama and other countries around the world to obtain and retain business for the company. The two individual defendants are alleged to have participated in the scheme by, among other things, serving as intermediaries for approximately $28 million in bribe payments made by and at the direction of Odebrecht to a then high-ranking government official in Panama (Panama Government Official), who was a close relative of the defendants. Luis Martinelli Linares and Ricardo Martinelli Linares were each charged with one count of conspiracy to commit money laundering.

Luis Martinelli Linares and Ricardo Martinelli Linares were arrested at el Aeropuerto Internacional la Aurora in Guatemala on July 6 pursuant to a provisional arrest request from the United States.

As alleged in the complaint, between approximately August 2009 and January 2014, the defendants facilitated the payment of bribes from Odebrecht to or for the benefit of the Panama Government Official by taking a number of steps that included opening and managing secret bank accounts held in the names of shell companies in foreign jurisdictions. These secret bank accounts were used to

receive, transfer, and deliver the bribe payments. The defendants served as the signatories on certain of the shell company bank accounts, and personally sent and caused to be sent wire transfers through the structure of shell company bank accounts to conceal and spend bribery proceeds. Many of these financial transactions were in U.S. dollars and were made through U.S. banks, some of which were located in New York.

The charges in the complaint announced today are allegations, and the defendants are presumed innocent unless and until proven guilty.

The FBI's International Corruption squad in New York investigated this case. Trial Attorney Michael Culhane Harper of the Criminal Division's Fraud Section, Trial Attorneys Barbara Levy and Michael Redmann of the Criminal Division's Money Laundering and Asset Recovery Section, and Assistant U.S. Attorneys Alixandra Smith and Julia Nestor of the U.S. Attorney's Office for the Eastern District of New York are prosecuting the case.

The Criminal Division's Office of International Affairs provided substantial assistance. Law enforcement authorities in Guatemala including the Public Ministry of Guatemala and Specialized Unit for International Affairs, and law enforcement authorities in El Salvador provided significant cooperation.

Deutsche Bank fined $150 million by New York for failures related to Epstein, Danske Bank, FBME Bank

By MLex Staff

In Brief

MLex Summary: Deutsche Bank was fined $150 million for significant failures related to its relationships with deceased sex offender Jeffery Epstein and its correspondent banking relations with Danske Bank Estonia and FBME Bank. The New York State Department of Financial Services said that Deutsche handled payments to Epstein's sex crime victims and made several suspicious transactions of more than $800,000. It said Deutsche should have taken more care with Epstein's transactions because of his criminal record.
Statement and document follow below:

July 07, 2020

SUPERINTENDENT LACEWELL ANNOUNCES DFS IMPOSES $150 MILLION PENALTY ON DEUTSCHE BANK IN CONNECTION WITH BANK'S RELATIONSHIP WITH JEFFREY EPSTEIN AND CORRESPONDENT RELATIONSHIPS WITH DANSKE ESTONIA AND FBME BANK
First Enforcement Action by a Regulator Against a Financial Institution for Dealings with Jeffrey Epstein

Superintendent of Financial Services Linda A. Lacewell announced today that Deutsche Bank AG, its New York branch, and Deutsche Bank Trust Company America (collectively "Deutsche Bank" or the "Bank") have agreed to pay $150 million in penalties as part of a Consent Order entered into with the New York State Department of Financial Services ("DFS" or the "Department") for significant compliance failures in connection with the Bank's relationship with Jeffrey Epstein and correspondent banking relationships with Danske Bank Estonia ("Danske Estonia") and FBME Bank ("FBME").

This agreement marks the first enforcement action by a regulator against a financial institution for dealings with Jeffrey Epstein.

"Banks are the first line of defense with respect to preventing the facilitation of crime through the financial system, and it is fundamental that banks tailor the monitoring of their customers' activity based upon the types of risk that are posed by a particular customer," Superintendent Lacewell said. "In each of the cases that are being resolved today, Deutsche Bank failed to adequately monitor the activity of customers that the Bank itself deemed to be high risk. In the case of Jeffrey Epstein in particular, despite knowing Mr. Epstein's terrible criminal history, the Bank inexcusably failed to detect or prevent millions of dollars of suspicious transactions."

With respect to the case of Jeffrey Epstein, the Bank failed to properly monitor account activity conducted on behalf of the registered sex offender despite ample information that was publicly available concerning the circumstances surrounding Mr. Epstein's earlier criminal misconduct. The result was that the Bank processed hundreds of transactions totaling millions of dollars that, at the very least, should have prompted additional scrutiny in light of Mr. Epstein's history, including:

payments to individuals who were publicly alleged to have been Mr. Epstein's co-conspirators in sexually abusing young women;
settlement payments totaling over $7 million, as well as dozens of payments to law firms totaling over $6 million for what appear to have been the legal expenses of Mr. Epstein and his co-conspirators;
payments to Russian models, payments for women's school tuition, hotel and rent expenses, and (consistent with public allegations of prior wrongdoing) payments directly to numerous women with Eastern European surnames; and
periodic suspicious cash withdrawals — in total, more than $800,000 over approximately four years.

This substantive failure was compounded by a series of procedural failures, mistakes, and sloppiness in how the Bank managed and oversaw the Epstein accounts. For example, certain conditions imposed upon the Epstein accounts by a Bank reputational risk committee — conditions that, if followed, might have detected and prevented many subsequent suspicious transactions — (a) were not transmitted to the majority of the account relationship team; and (b) were misinterpreted by a compliance officer in a way that resulted in very little actual change in how the monitoring of the accounts occurred. Throughout the relationship, very few problematic transactions were ever questioned, and even when they were, they were usually cleared without satisfactory explanation.

In the cases of Danske Estonia and FBME, the Department concluded that Deutsche Bank failed to properly monitor the activities of their foreign bank clients with respect to their correspondent and dollar clearing business.

Danske Estonia, which is at the center of one of the world's largest money laundering scandals, suffered from inherent control failures that resulted in large quantities of money being moved on behalf of Russian oligarchs. Over the course of the years-long relationship between Deutsche Bank and Danske Estonia, Deutsche Bank was repeatedly put on notice of these failings and of the fact that few improvements were undertaken by Danske Estonia. Despite the fact that Deutsche Bank assigned Danske Estonia its highest possible risk rating, Deutsche Bank failed to take appropriate action to prevent Danske Estonia from transferring billions of dollars of suspicious transactions through Deutsche Bank accounts in New York.

Deutsche Bank's relationship with FBME similarly represented a failure by the Bank to act on red flags concerning a correspondent banking relationship with a foreign bank. From the beginning of its relationship with FBME, Deutsche Bank considered FBME to be a high-risk client that required annual enhanced anti-money laundering checks. Despite these checks, there was little evidence that FBME improved the quality of its controls over several years. Eventually, FBME's failings resulted in the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") mandating that all Banks operating in the United States to stop doing business with FBME. By that point, Deutsche Bank was the last major Western bank with a correspondent banking relationship with FBME.

Mexican draft bill proposing changes in public acquisitions will reduce corruption, increase competition, authorities say

By Ana Paula Candil

In Brief

A draft bill proposing new rules for public acquisitions in Mexico will increase transparency in government purchases and promote competition by requiring participation of small players in bidding processes, anticorruption and competition authorities said.

A draft bill proposing new rules for public acquisitions in Mexico will increase transparency in government purchases and promote competition by requiring participation of small players in bidding processes, anticorruption and competition authorities said.

The proposal, sent to the Chamber of Deputies last week, would create a digital platform to hold information about all public acquisitions, ultimately speeding up government purchases and increasing transparency of public spending.

The proposed bill was drawn up by several authorities, including the Mexican competition authority; the Mexican Institute for Competition; the Executive Secretariat of the National Anticorruption System; México Evalúa, an independent think tank that provides evidence on the quality and effectiveness of Mexican public policies; and Transparencia Mexicana, a civil society organization dedicated to combating corruption in Mexico.

Speaking at a webinar,* the general director of the Mexican Institute for Competition, Valeria Moy, said the bill will create a more efficient public contracting system.

"We live from the inefficiencies of a poor contracting system. Laws should minimize corruption practices, allowing more agents to participate in public purchases, opening the doors to small-to-medium companies in order to increase competition," Moy said.

Mariana Campos, coordinator of the Public Expenditure and Accountability Program at México Evalúa, said the proposal will create a "uniform policy" that regulates public acquisitions.

Mexico currently has a "fragmented policy" that lacks market analysis about prices and products available to make the best purchases, she said.

"The digital platform is the key to our proposal," Campos said, adding "It will decrease the face-to-face interaction between participants in a contract, reducing corruption risks. It will contain all information in a linked way to facilitate hiring and allow it to be done in a quicker way."

Alejandra Palacios, the head of the Federal Economic Competition Commission, or Cofece, said her agency worked on the proposed bill to make bidding processes "more open" to competitors. "Many parts of the bill talk about requirements that make the hiring process as competitive as possible," she said.

Palacios also said Cofece's sanctions in bid-rigging cartels, which include both fines and prohibitions to operate, will remain unchanged. "We don't think that we need to increase fines. The main business of many companies is sell to the government, and prohibiting them from contracting with the government is harsh enough," Palacios said, adding that in markets where competition is scarce, her agency may not impose that sanction.

Through the proposed bill, the Mexican competition authority would be responsible for issuing binding opinions about bidding processes involving major government acquisitions before they occur. Mechanisms for entities to assess corruption risk would also be created, such as implementation of internal and external audits and an obligation to record, in real time, the monitoring of the execution of contracts.

Ricardo Salgado, secretary at the Executive Secretariat of the National Anticorruption System, said "the bill will enable a public contracting system based on the principles of competition and impartiality," hindering "non-competitive acquisitions" by the federal

government.

Finally, the executive director of Transparencia Mexicana, Eduardo Bohórquez, said there are 122 different ways to contract with the government in Mexico, highlighting the need for standardizing how public acquisitions are made.

"This initiative is a true historical battle. We need standard public information, a tool that contains all the information available on the [purchase] process, both to avoid corruption and to decide well on whatever is being hired," he said.

** "Press Conference: Presentation of the General Law for Public Acquisitions in Mexico," July 6, 2020.*

Peruvian company agrees to settle Odebrecht-related class action

By Maggie Hicks

Graña y Montero, a construction company based in Peru, has agreed to settle a class action lawsuit brought by a group of disgruntled investors for $20 million, according to a 2 July court filing.

Investors filed the complaint in February 2017 with a Brooklyn federal court, claiming that Graña y Montero violated US securities laws after it failed to disclose its role in the Odebrecht bribery scheme.

Graña y Montero partnered on multiple public works projects with Odebrecht, a Brazilian engineering business, between 2005 and 2011. Investors claimed that the Peruvian company knew about various bribes Odebrecht paid to secure the projects, including a $20 million bribe to former President Alejandro Toledo for the Interoceanica Sur highway and Lima Metro projects. They also alleged that Graña y Montero reimbursed Odebrecht for its share of the bribe.

Investors said that the company's public statements were "false and misleading" after Graña y Montero's stock rose throughout the duration of the bribery scheme but later plummeted when Odebrecht pleaded guilty to the alleged misconduct in 2016 in a multibillion dollar settlement with authorities in the US, Brazil and Switzerland.

The Peruvian company agreed to pay investors $20 million in damages due to Graña y Montero's knowledge of the bribes and reimbursements to Odebrecht. Up to 25% of the settlement will cover investors' legal fees.

"We think this settlement is an excellent result for members of the class and it was achieved at an early stage of the litigation," said David Rosenfeld, counsel to the lead plaintiff at the Rosen Law Firm, in an email statement.

Counsel to Graña y Montero did not reply to a request for comment.

Counsel to plaintiffs

The Rosen Law Firm

Partner Laurence Matthew Rosen

Robbins Geller Rudman & Dowd

Partners Alan Ian Ellman and David Avi Rosenfeld

Cohen & Mizrahi

Partner Moshe O. Boroosan

Counsel to Graña y Montero

Simpson Thacher & Bartett

George S Wan, Anar Rathod Patel and Caitlyn Chacon

FCPA Fun fact: Snakes can help predict earthquakes. They can sense a coming earthquake from 75 miles away (121 km), up to five days before it happens.

Lianis Marrero Mendez
Paralegal | Contractor
Fraud Section, Criminal Division
U.S. Department of Justice
1400 New York Ave, NW | Washington, D.C. 20530

lianis.marrero.mendez@usdoj.gov
Office: (202) 514.5650
Cell: (202) 230.6206