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SEC Concludes the 2018-19 Fiscal Year with Four FCPA Enforcement Actions

The SEC closed out its 2018-19 fiscal year by resolving four FCPA enforcement actions and assessing over \$25 million in combined penalties, bringing the total number of SEC resolutions in 2019 to twelve. The SEC resolved matters with TechnipFMC plc for \$5.1 million; with Quad/Graphics, Inc. for \$9.9 million; with Barclays PLC for \$6.3 million; and with Westport Fuel Systems, Inc. for \$4.1 million.

Three of the four enforcement actions concerned alleged violations of the FCPA's anti-bribery provisions, and all four enforcement actions concerned alleged violations of the FCPA's books and records and internal accounting provisions. TechnipFMC plc resolved allegations that its predecessor had bribed Iraqi officials to obtain contracts with Iraq state-owned oil companies. Quad/Graphics, Inc. settled allegations that its newly acquired subsidiaries bribed Peruvian and Chinese officials to win sales contracts and avoid penalties on existing contracts. Barclays PLC settled allegations that the British bank's subsidiaries sought to advantage their investment banking business improperly by hiring the relatives and friends of foreign officials. Westport Fuel Systems, Inc. and Nancy Gougarty, Westport's former CEO, settled allegations that they bribed a Chinese official to receive an increased dividend payment and secure a framework supply agreement.¹

Collectively these four resolutions—coupled with the recent announcement by Ericsson that it had set aside over \$1.2 billion to resolve the pending FCPA investigation²—demonstrate that the SEC maintains an active FCPA enforcement docket notwithstanding the recent comments of its Chairman that the SEC is “acting largely alone” and that there is a “continuing lack of global commitment” to anti-corruption enforcement.³

TechnipFMC plc

The SEC alleged that, from at least 2008 through 2013, FMC Technologies, TechnipFMC's predecessor, engaged in a scheme to bribe officials at the Iraq Ministry of Oil and at the South Oil Company and the

¹ Paul, Weiss represented Westport Fuel Systems, Inc. in its settlement with the SEC.

² See Press Release, Telefonaktiebolaget LM Ericsson, *Ericsson Estimates Costs for Resolving Investigations by U.S. Authorities at SEK 12 b. and Makes Provision in Third Quarter* (Sept. 25, 2019), available [here](#); Dylan Tokar, *Ericsson Sets Aside \$1.23 Billion for Foreign Bribery Settlement, Possible Monitor*, WALL ST. J. (Sept. 26, 2019), available [here](#).

³ See Jay Clayton, Chairman, Sec. Exch. Comm'n, *Remarks to the Economic Club of New York* (Sept. 9, 2019), available [here](#).

Missan Oil Company, both state-owned oil companies.⁴ FMC Technologies allegedly made over \$794,000 in payments to a third-party consultant who facilitated bribe payments to win oil and gas production-related contracts from the Iraqi government.⁵ According to the SEC, the internal controls failures allowed FMC Technologies to enter into at least eleven “vague” consultancy and site installation agreements with the third-party.⁶ Under the consultancy agreements, FMC Technologies would pay the third-party consultant a success-based commission percentage on each contract that FMC Technologies won in Iraq. However, these commissions were actually reimbursements for bribes that the third-party consultant or its sub-agents had paid to the Iraqi officials on FMC Technologies’ behalf, with FMC Technologies paying the commissions only after they received “full customer payment” from the Iraqi government.⁷

FMC Technologies is alleged to have overlooked numerous “red flags,” paying the third-party consultant without evidence of services rendered and allowing the consultant to use sub-agents and success-based fee compensation without adequate due diligence. FMC Technologies then allegedly falsely characterized the agreements in its books and records as legitimate transactions, despite the lack of appropriate support.

Without admitting or denying the SEC’s findings, TechnipFMC consented to a cease-and-desist order and agreed to pay over \$5 million to the SEC in disgorgement and prejudgment interest.⁸ As a condition of settlement, TechnipFMC agreed to comply with certain undertakings, including self-reporting for three years, with particular attention focused on the company’s due diligence of third-party consultants and vendors, FCPA training and the collection and analysis of compliance data.⁹

The SEC’s announcement comes three months after TechnipFMC entered into a three-year deferred prosecution agreement with the DOJ and agreed to pay a combined total criminal fine of more than \$296 million for conduct relating to the findings in the SEC’s Order.¹⁰ The SEC decided not to impose a civil penalty in light of TechnipFMC’s settlement with the DOJ announced this past June. In determining to accept the cease-and-desist offer, the SEC considered TechnipFMC’s remedial efforts, which included removing the employees responsible for the conduct and improving its compliance program by adding

⁴ See *In the Matter of TechnipFMC plc.*, Exchange Act Release No. 87055 (Sept. 23, 2019), available [here](#).

⁵ *Id.* at 2.

⁶ *Id.* at 4, 9.

⁷ *Id.* at 4–5.

⁸ *Id.* at 13.

⁹ *Id.* at 10–12.

¹⁰ See Client Memorandum, Paul, Weiss, Rifkind, Wharton & Garrison LLP, TechnipFMC Agrees to Pay \$296 Million to DOJ and Brazilian Authorities to Resolve Criminal FCPA Charges; SEC Civil Charges Pending (July 2, 2019), available [here](#).

experienced personnel in key positions and providing additional trainings for employees and certain third parties.¹¹

Quad/Graphics, Inc.

The charges against Quad/Graphics, Inc. (“Quad”), a Wisconsin-based marketing and printing services company, arose from two alleged bribery schemes involving the company’s Peruvian and Chinese subsidiaries.¹² From 2011 to 2016, Quad’s Peruvian subsidiary allegedly paid or promised bribes to Peruvian government officials to win sales contracts, with the subsidiary’s executives providing a “commission” to third-parties with influence in the Peruvian government, and using “sham vendors” to pay bribes to secure business, reduce penalties and extend delivery dates on existing contracts.¹³ Quad’s Peruvian subsidiary also retained a Peruvian law firm to arrange for payments intended to influence the judicial outcome of a dispute with the Peruvian tax authority, with payments itemized as “extraordinary” or “success” fees so that the law firm could use the funds to bribe the judges.¹⁴ The Peruvian subsidiary is also alleged to have created false records to conceal transactions with a state-controlled Cuban telecommunications company, which were subject to U.S. sanctions and export controls laws.¹⁵ In a separate scheme, the SEC found that from 2010 to 2015, Quad’s Chinese subsidiary paid “commissions” to sham sales agents who made improper payments to induce employees of private and government customers to purchase the subsidiary’s printing systems.¹⁶ According to the SEC, despite the fact that Quad acquired a large global workforce, began operations in high-risk areas and listed its shares on the NYSE, Quad’s compliance program was “almost non-existent.”¹⁷

According to the SEC’s Order, none of the improper payments made by Quad’s subsidiaries in Peru and China were accurately reflected in its books and records, and the company failed to have sufficient internal accounting controls in place to detect or prevent the various misconduct. Quad was allegedly enriched unjustly by approximately \$7 million as a result of these schemes.

Without admitting or denying the charges, Quad agreed to pay \$9.9 million to settle the charges.¹⁸ The settlement amount comprises a \$2 million civil penalty and \$7.9 million in disgorgement and prejudgment

¹¹ See *In the Matter of TechnipFMC plc.*, at 10.

¹² See *In the Matter of Quad/Graphics, Inc.*, Exchange Act Release No. 87128 (Sept. 26, 2019), available [here](#).

¹³ *Id.* at 4–5.

¹⁴ *Id.* at 6–8.

¹⁵ *Id.* at 8–10.

¹⁶ *Id.* at 10–11.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 14–15.

interest. As a condition of settlement, Quad agreed to self-report to the SEC for one year about its progress in improving its compliance controls. Consistent with the FCPA Corporate Enforcement Policy, the DOJ declined to prosecute the company in light of, among other things, Quad's comprehensive investigation, voluntary disclosure of the misconduct and proactive cooperation with the DOJ.¹⁹

Barclays PLC

Barclays agreed to pay \$6.3 million in penalties for alleged violations of the FCPA's books and records and internal accounting controls provisions, in a continuation of FCPA enforcement actions focused on alleged improper hiring practices.²⁰

According to the SEC's Order, from 2009 to 2013, Barclays' subsidiaries in Asia hired 117 job candidates referred by or connected to foreign government officials or nongovernment clients.²¹ The SEC alleged that many of these "relationship hires" were made by senior executives through an unofficial "work experience program" that set forth procedures in an attempt to manage the number of candidates that each jurisdiction, such as businesses in South Korea and Hong Kong, could hire.²² Other candidates are alleged to have been hired improperly through Barclays' formal internship program, its graduate program or as candidates for permanent positions, despite the candidates' connections to government officials at state-owned entities or to executives of nongovernment clients where business was either pending or being sought.²³

Although Barclays maintained anti-bribery and corruption policies, the SEC alleged that certain senior executives and bankers in the Asia-Pacific region were either unfamiliar with these policies or that bribery could include internships and offers of employment within the definition of exchanging "anything of value."²⁴ In addition, with respect to certain hires, Barclays' employees in the Asia-Pacific region are alleged to have falsified corporate records to conceal the true sources referring certain candidates and the reasons for hiring them. The SEC alleged that Barclays recognized the corruption risks of relationship hiring but failed to devise and maintain sufficient internal accounting controls over its hiring practices, including its

¹⁹ See Quad/Graphics Inc. Declination Letter, Dep't of Justice (Sept. 19, 2019), available [here](#).

²⁰ See, e.g., *In the Matter of the Bank of New York Mellon Corp.*, Exchange Act Release No. 75720 (Aug. 18, 2015), available [here](#); *In the Matter of Qualcomm Inc.*, Exchange Act Release No. 77261 (Mar. 1, 2016), available [here](#); *In the Matter of JP Morgan Chase & Co.* Exchange Act Release No. 79335 (Nov. 17, 2016), available [here](#); *In the Matter of Credit Suisse Group AG*, Exchange Act Release No. 83593 (July 5, 2018), available [here](#); *In the Matter of Deutsche Bank AG*, Exchange Act Release No. 86740 (Aug. 22, 2019), available [here](#).

²¹ See *In the Matter of Barclays PLC*, Exchange Act Release No. 87132 (Sept. 27, 2019), available [here](#).

²² *Id.* at 3–5.

²³ *Id.* at 4–7.

²⁴ *Id.* at 3.

alleged failure to train employees in the Asia-Pacific region effectively or to monitor their compliance with the bank's anti-corruption policies.²⁵

In determining to accept the cease-and-desist offer, the SEC considered that Barclays voluntarily reported the alleged misconduct and, prior to the SEC's investigation, undertook remedial steps including terminating senior executives alleged to have been involved in the misconduct, revising its hiring policies and procedures, and enhancing its compliance programs. Without admitting or denying the allegations, Barclays agreed to pay a \$1.5 million civil penalty and \$4.8 million in disgorgement and prejudgment interest.²⁶

Westport Fuel Systems, Inc.

According to the SEC, beginning in 2016, Westport Fuel Systems, Inc. ("Westport") through Nancy Gougarty, the company's former CEO, engaged in a scheme to bribe a Chinese government official to obtain business and a cash dividend payment by transferring at a low price a portion of shares in Westport's Chinese joint venture to a Chinese private equity fund in which the government official was believed to hold a financial interest.²⁷ In exchange for this allegedly low-price share purchase, the Chinese official was allegedly expected to use his influence to cause the joint venture to authorize an increased dividend payment of \$3.5 million to Westport and to execute a supply agreement between Westport and the joint venture.²⁸

The SEC also alleged that Westport concealed the identity of the Chinese private equity fund in its public filings, as well as in its books and records, by falsely identifying a different entity as the counterparty to the transaction. According to the SEC, Gougarty caused Westport's violations by circumventing the company's internal accounting controls and signing a false certification concerning the sufficiency of those controls. Charles Cain, Chief of the SEC Enforcement Division's FCPA Unit, said that Gougarty "exploited weaknesses in the company's controls to engage in bribery, undermining shareholder interests."²⁹ The SEC also noted that Westport's Code of Conduct did not require due diligence for when the company engaged in a transaction with a third party in which a government official may have a financial interest.

Without admitting or denying the SEC's findings, Westport and Gougarty consented to a cease-and-desist order.³⁰ Gougarty agreed to pay a civil penalty of \$120,000. Westport agreed to pay a civil penalty of \$1.5

²⁵ *Id.* at 7–8.

²⁶ *Id.* at 9.

²⁷ See *In the Matter of Westport Fuel Systems, Inc.*, Exchange Act Release No. 87138 (Sept. 27, 2019), available [here](#).

²⁸ *Id.* at 2.

²⁹ See Press Release, Sec. Exch. Comm'n, *SEC Charges Canadian Clean Fuel Technology Company and Former CEO with FCPA Violations* (Sept. 27, 2019), available [here](#).

³⁰ See *In the Matter of Westport Fuel Systems, Inc.*, at 8–9.

million and \$2.5 million in disgorgement and prejudgment interest. Westport also agreed to self-report for a period of two years. In determining to accept the cease-and-desist offer, the SEC considered Westport's remedial efforts, which included revising its anti-corruption policies and making foreign witnesses available for testimony in the U.S.³¹

Conclusion

Including these four corporate enforcement actions, the SEC settled seven FCPA corporate enforcement actions in the third quarter of 2019. Penalties and disgorgement from these settlements totaled \$78.5 million. Collectively, these resolutions demonstrate the SEC's continued commitment to FCPA enforcement notwithstanding Chairman Jay Clayton's remarks that the Commission has "not seen meaningful improvement" in global anti-corruption enforcement efforts.³² Focus on the adequacy of compliance also remains strong, as the enforcement actions announced in the past quarter reflect the SEC's continued reliance on the FCPA's accounting provisions in cases in which they believe an issuer's inadequate compliance program creates the potential for bribery.

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³¹ *Id.* at 6–7.

³² See Jay Clayton, Chairman, Sec. Exch. Comm'n, *Remarks to the Economic Club of New York* (Sept. 9, 2019), available [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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