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## **Month in a Minute: Developments in Anti-Corruption**

We are pleased to present this inaugural edition of Hughes Hubbard's anti-corruption "Month in a Minute," a quick look-back at the biggest foreign corruption-related developments from the prior month. While our annual **FCPA and Anti-Bribery Alert** is well known for its detail and depth (and length?!), the Month in a Minute is intended to provide a quick snapshot of the latest news and developments. We hope you find it a useful and perhaps even enjoyable resource.

May 2023 highlights included court rulings and sentencings, a change at the top of the DOJ FCPA Unit, a massive SEC whistleblower award, and a couple of SEC corporate resolutions. Read on to learn more.

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### **Whistleblower Receives \$279 Million Award**

On May 5, 2023, the SEC announced that it conferred a \$279 million award to a whistleblower who provided assistance critical to the successful enforcement of SEC and related actions, including participating in multiple interviews and submitting written submissions. The award marks the largest-ever given to a whistleblower in SEC history, surpassing the previous record of \$114 million, which the SEC awarded in October 2020. SEC rules allow whistleblowers to receive 10% to 30% of the total fines collected in SEC civil-enforcement actions and related enforcement actions where the SEC collects more than \$1 million. The SEC did not identify the specific action in which the whistleblower provided information; however, The Wall Street Journal recently reported that the award was granted in relation to Ericsson's \$1.1 billion settlement with U.S. authorities to resolve allegations that it used third parties to bribe public officials in exchange for an estimated \$427 million in business in Djibouti, China, Vietnam, Kuwait and Indonesia between 2000 and 2016.

### **New Acting Chief Appointed for DOJ FCPA Unit**

On May 8, 2023, the DOJ confirmed that David Last, who had served as chief of the FCPA Unit since 2021, left the Department. David Fuhr, the former principal assistant chief of the FCPA Unit, was promoted to acting chief. Fuhr first became assistant chief in October 2019 and was promoted to principal assistant chief in 2021. He has been with the DOJ's Criminal Division since 2013. The DOJ also announced that Keith Edelman, a former senior counsel to the head of the DOJ's Criminal Division, would take over Fuhr's old position and become acting principal assistant chief of the FCPA Unit. Edelman joined the DOJ in 2022 after working for Meta.

### **Philips Pays SEC \$62 Million to Settle FCPA Charges**

On May 11, 2023, the SEC announced that Koninklijke Philips N.V. ("Philips") agreed to pay the SEC \$62 million to resolve the SEC's investigation into alleged FCPA violations in China. The SEC charged Philips with violating the FCPA's books and records and internal accounting controls provisions based on the involvement of two of its Chinese subsidiaries in a scheme to bribe public

officials. Between 2014 and 2019, the subsidiaries gave discounts to distributors of Philips's medical imaging equipment. The distributors used the money saved through those discounts to make improper payments to Chinese Government officials. The SEC alleged that Philips improperly received approximately \$41 million as a result of this scheme. Without admitting or denying the SEC's allegations, Philips agreed to pay a \$15 million civil penalty and \$47.1 million in disgorgement and pre-judgment interest. In agreeing to the settlement, the SEC considered Philips's cooperation, which included conducting an internal investigation, sharing its findings with SEC staff, and providing translations of non-privileged documents. The SEC also noted Philips's remediation efforts, which included revisions to its compliance training, improvements to tone at the top, and the termination and discipline of employees involved in the alleged misconduct, among other actions. This settlement comes after Philips's 2013 settlement with the SEC to resolve books and records and internal controls charges involving similar misconduct in Poland, which took place from 1999 to 2007. As part of that settlement, Philips agreed to pay the SEC \$4.5 million. In a statement regarding its settlement, Philips announced that the DOJ had closed its parallel inquiry into the matter.

### **FIFA Cooperator Alejandro Burzaco Gets Time Served**

On May 12, 2023, Alejandro Burzaco, the former General Manager and Chairman of the Board of Torneos y Competencias S.A., an Argentinian sports marketing company, received a sentence of time served with no fine and no supervised release for his involvement in the FIFA corruption scandal. In 2015, Burzaco turned himself in to Italian authorities and was extradited to the United States, where he pleaded guilty to racketeering conspiracy, wire fraud conspiracy and money laundering based on his involvement in bribing soccer officials in Latin America in exchange for rights to broadcast tournaments. In the eight years that followed, Burzaco cooperated with the U.S. federal investigation into FIFA. Under the U.S. Federal Sentencing Guidelines, Burzaco faced 14 to 17 years in prison for his role in the FIFA scandal; however, U.S. District Judge Pamela Chen sentenced him to time served due to his extensive cooperation with the DOJ, which included 15 days of testimony in two separate trials. In addition, Judge Chen declined to impose a fine, but signed a \$22 million forfeiture order, which Burzaco had agreed to as part of his 2015 guilty plea. Burzaco stated that he will continue to cooperate with the U.S. government.

### **Former Head of NGO Receives One-Year Sentence for Bribery Charges**

On May 17, 2023, Cary Yan, the former head of the World Organization of Governance and Competitiveness ("WOGC"), an NGO affiliated with the United Nations, received a one-year sentence from U.S. District Judge Naomi Reice Buchwald of the U.S. District Court of the Southern District of New York after pleading guilty to bribing public officials in the Republic of the Marshall Islands. Yan, along with his assistant and co-defendant, Gina Zhou, pleaded guilty to paying approximately \$40,000 in bribes and other incentives to Marshallese officials in exchange for their support in passing legislation that would bring investors to Rongelap Atoll, a coral atoll of sixty-one islands in the Pacific Ocean. Beginning in 2016, Yan and Zhou, acted as representatives of WOGC and met with government officials. Their initial attempt to pass legislation failed. However, after an administration change, the officials who received bribes from Yan and Zhou endorsed the legislation. Yan was sentenced to 42 months in prison, but will only serve one year after receiving full credit for the 30 months he served under house arrest in Thailand. Zhou was sentenced to time served.

### **FCPA Charge Against Paulo J.D.C. Casqueiro-Murta Dismissed Again**

On May 17, 2023, the U.S. District Court for the Southern District of Texas, Houston Division dismissed an FCPA charge against Paulo J.D.C. Casqueiro-Murta, a Portuguese citizen, for the second time. In 2019, Murta was indicted on one count of FCPA conspiracy and three related money-laundering counts for

his alleged involvement in setting up bank accounts to facilitate bribe payments to officials at Venezuela's state energy company, PDVSA. Murta was extradited to Houston in July 2021. In July 2022, U.S. District Judge Kenneth Hoyt of the U.S. District Court for the Southern District of Texas dismissed the charges based on lack of jurisdiction, statute of limitations, vagueness of the FCPA "agent" language, and failure to give a Miranda warning. Prosecutors appealed the dismissal, which the Fifth Circuit Court of Appeals reversed in March 2023. On remand, Judge Hoyt again dismissed all charges, this time on grounds that Murta did not receive a speedy trial. On May 18, 2023, Judge Hoyt agreed to stay the dismissal until seven days after he issues a memorandum detailing his reasoning for dismissing the case.

## **Consulting Firm, Gartner, Agrees to Pay \$2.5 Million to SEC to Settle FCPA Charges**

On May 26, 2023, the SEC announced that it settled charges against Gartner, Inc., a Connecticut-based consulting firm, for violations of the anti-bribery, books and records, and internal accounting control provisions of the FCPA. The SEC alleged that Gartner entered into a corrupt arrangement with the South African Revenue Service ("SARS") between 2014 and 2015. According to the SEC Order, Gartner, at the request of SARS officials, hired a private South African IT company known as Rangewave. Gartner allegedly made corrupt payments to Rangewave, which were then used to bribe SARS officials; in exchange, SARS awarded consulting contracts to Gartner. Gartner did not admit or deny the allegations, but agreed to pay \$2.5 million, including \$857,000 in disgorgement and pre-judgment interest and a \$1.6 million civil penalty. Gartner received credit for self-disclosing the alleged corruption. Gartner also received credit for its cooperation and remediation efforts, which included providing the SEC with updates and findings from its internal investigation, making foreign-based employees available for interviews in the U.S., revising and strengthening its compliance policies, and enhancing its due diligence procedures.

## **Bribery Charges Against Former Vitol Trader Dismissed for Lack of Venue**

On May 31, 2023, U.S. District Judge Eric Vitaliano of the U.S. District Court for the Eastern District of New York dismissed for lack of venue two foreign bribery charges against Javier Aguilar, a former trader for European oil trader Vitol's U.S. subsidiary. The Mexico-related charges were added in a superseding indictment filed on December 2, 2022, to previously-filed charges relating to a separate bribery scheme in Brazil. As relates to Mexico, Aguilar was charged with bribing Mexican officials who worked at a subsidiary of Mexico's state-owned oil company, Petróleos Mexicanos. According to the indictment, Aguilar paid more than \$600,000 in bribes in exchange for insider information, which gave Vitol an advantage over competitors. Although the Mexico-related bribery charges were dismissed for lack of venue, Judge Vitaliano declined to dismiss a related money laundering charge, as some of the transactions had occurred in the Eastern District of New York.

## **FACT OF THE MONTH**

On May 6, 2023, Churchill Downs hosted the 149th running of the Kentucky Derby. Through two world wars, at least two global pandemics, the Great Depression, and multiple recessions, the Kentucky Derby has never been cancelled since it started in 1875. That makes "The Most Exciting Two Minutes in Sports" 13 years older than Hughes Hubbard, which was founded by Charles Evans Hughes in 1888. At the time of the inaugural running of the Kentucky Derby, Hughes was just 13 years old and had only recently begun his formal, out-of-house education. He would go on to graduate from Brown University just six years later. The rest, as they say, is history.

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