



Month in a Minute: December 2023

Hughes Hubbard's anti-corruption "Month in a Minute" offers a quick look-back at the biggest foreign corruption-related developments from the prior month. 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.

Highlights from December 2023 include a new law tackling the demand-side of foreign bribery, a resolution to FCPA charges against a Connecticut trading company, a return of recovered 1MDB funds to Malaysia, and the deferral of a decision in a case related to the FIFA bribery scheme.

U.S. Congress Passes Foreign Extortion Prevention Act

On December 22, 2023, President Biden signed into law the long-awaited Foreign Extortion Prevention Act (FEPA). FEPA closes what many considered to be a gap in the FCPA by addressing and penalizing the demand side of foreign bribery. Under FEPA, foreign officials who solicit or accept bribe payments from U.S. individuals or companies, or who use the U.S. financial system to facilitate such payments, could face a maximum 15-year prison sentence and a fine of \$250,000 or up to three times the amount of the bribe. In addition, FEPA requires the U.S. Attorney General to submit an annual report to Congress outlining the DOJ's efforts to enforce FEPA.

Freepoint Resolves Charges Related to Brazilian Bribes

On December 14, 2023, the DOJ announced that Freepoint Commodities LLC ("Freepoint"), a Connecticut-based commodities trading company, entered into a three-year deferred prosecution agreement (DPA) and agreed to pay more than \$106 million to resolve charges that it paid bribes to officials at Brazil's state-owned oil company, *Petróleo Brasileiro S.A. ("Petrobras")*. In a parallel resolution with the Commodity Futures Trading Commission, Freepoint was ordered to pay more than \$91 million in civil monetary penalties and disgorgement because of its conduct.

Freepoint admitted that from 2012 until 2018, Freepoint and its co-conspirators paid bribes to Petrobras officials in exchange for confidential information regarding competitor prices and bids. Freepoint and its co-conspirators hid the unlawful scheme by using code words, fake names, encrypted messaging applications, sham negotiations, and a network of offshore bank accounts and shell corporations. In total, Freepoint profited \$30 million from its scheme. Pursuant to the DPA, Freepoint agreed to pay \$68 million in criminal penalties and forfeit \$30.5 million in ill-gotten gains. The DOJ agreed to credit up to one-third of the penalty against what Freepoint will pay to resolve Brazilian law enforcement investigations into the scheme, and up to 25% of the forfeiture amount against the disgorgement Freepoint paid to the CFTC for related conduct. Although, per the DOJ, Freepoint initially only cooperated in a "limited" manner that was "largely reactive," Freepoint's later cooperation and remedial measures resulted in the DOJ granting a 15% reduction off the low end of the applicable fine range under the U.S. Sentencing Guidelines. Freepoint's cooperation included

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efforts to promptly respond to requests for documents and information, aggregate and analyze financial information and trading data for over 4,000 transactions, make officers and employees available for interviews, and provide information about the individuals involved. Freepoint's remedial measures included analyzing the causes of the corrupt scheme, hiring an advisory firm to assess its third-party compliance program, overhauling its third-party compliance and risk management program, hiring new compliance personnel, updating its anti-corruption policies, and testing its third-party compliance program, among other actions.

U.S. to Return an Additional \$100 Million in Recovered 1MDB Funds to Malaysia

On December 12, 2023, Deputy Assistant Attorney General Kevin Driscoll announced that the United States would be returning to Malaysia \$100 million in funds that were recovered as a result of the DOJ's investigation into the 1MDB bribery scheme. The 1MDB scheme is well documented, with prosecutions, investigations, and enforcement actions spanning several jurisdictions, including the U.S., Malaysia, Abu Dhabi, and Switzerland. DAAG Driscoll stated that the latest recovered funds would be used to pay back significant debt Malaysia incurred because of the scheme. In total, the U.S. has returned more than \$1.3 billion in recovered funds to Malaysia since U.S. authorities began investigating the 1MDB scheme in 2015.

Judge Defers Decision on Whether to Vacate ex-Brazilian Soccer Official's Conviction

On December 18, 2023, U.S. District Judge Pamela K. Chen of the U.S. District Court for the Eastern District of New York issued an order stating that she would not rule on whether to vacate the conviction of José Maria Marin, who served as the president of Brazil's soccer federation from 2012 through 2015, pending the Second Circuit's decision in a related case. On August 22, 2018, Judge Chen sentenced Marin to four years in prison and ordered him to pay \$3.3 million in forfeiture and a \$1.2 million fine for his involvement in the FIFA corruption scandal. On March 30, 2020, Judge Chen ordered that Marin, who was 87 at the time, be released from prison on compassionate release grounds.

On December 14, 2023, Marin filed a motion to vacate his conviction. Marin's motion to vacate came after Judge Chen vacated the convictions of other FIFA defendants, former 21st Century Fox television executive Hernán Lopez and Argentine sports marketing company Full Play Group, in September 2023. Judge Chen vacated the convictions of Lopez and Full Play Group following the U.S. Supreme Court's decision in *Percoco v. United States*, 598 U.S. 319 (2023). Judge Chen ruled that the *Percoco* decision had effectively narrowed the honest services fraud statute under which Lopez and Full Play Group were convicted by excluding foreign commercial bribery. As a result, there was not enough evidence to sustain Lopez's and Full Play Group's convictions under the statute. Federal prosecutors appealed Judge Chen's ruling to the U.S. Court of Appeals for the Second Circuit, and the appeal is currently pending. Citing the pending appeal, Judge Chen deferred ruling on Marin's motion to vacate until the Second Circuit renders its decision.

FACT OF THE MONTH

On December 10, 2023, the annual Nobel Prize Award Ceremonies were held in Stockholm, Sweden and Oslo, Norway. The two ceremonies, one for the Nobel Peace Prize (in Oslo) and one for the other Nobel prizes (in Stockholm) are held each year on the anniversary of Alfred Nobel's death. Alfred Nobel, a Swedish chemist, inventor, engineer, and businessman, died on December 10, 1896. Nobel, together with his brothers, earned a fortune in the oil business in Azerbaijan in the late 1800s. Before his death, Nobel set aside 94% of his total assets to establish the Nobel Prizes. According to his last will, the prizes should recognize those who "conferred the greatest benefit to humankind" in the fields of physics, chemistry, physiology or medicine, literature, and peace.