

Enforcement of the Foreign Corrupt Practices Act and Other Anti-Bribery Laws: Recent Trends Involving Latin America

Hector Gonzalez, Mauricio A. España, James Ancone, Mayer Brown LLP

Enacted in 1977 in the wake of the Watergate scandal, the Foreign Corrupt Practices Act ("FCPA") provides U.S. authorities with a potent weapon to combat bribery of foreign public officials by companies and individuals alike.¹ Coming off a year that witnessed a record number of trials, individuals charged, and fines imposed under the FCPA, officials at the Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC") announced that FCPA enforcement will remain a top priority throughout 2010. Lanny Breuer, Assistant Attorney General of the Criminal Division, noted that he expects the number of FCPA prosecutions to increase.² Robert Khuzami, Director of the SEC's Division of Enforcement, recently announced the creation of a specialized FCPA unit with an eye toward more effectively coordinating the agency's FCPA investigations and cases.³ The members of this unit will work exclusively on FCPA issues and develop expertise in certain industries and regional business practices.⁴ This increased FCPA scrutiny is particularly relevant to companies doing business in Latin America. With governments, such as Brazil's, increasing their spending, there will be more opportunities for companies to bid on public procurement contracts, forcing direct interaction with government officials.⁵ Even when not directly dealing with government officials, FCPA risks in the region remain. Companies in the oil, pharmaceutical, infrastructure, and telecommunications industries must be vigilant because of the ownership interests that Latin American governments have in these sectors, which may not be apparent before conducting due diligence.⁶ Moreover, future nationalization of certain companies is not out of the question.⁷

Companies doing business in the region must also be cognizant of the legislation passed and currently being considered pursuant to multi-lateral treaties, such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Convention") and the Inter-American Convention Against Corruption ("IA Convention").⁸ Both of these conventions require their signatories to criminalize the bribery of foreign public officials.⁹ To that end, a number of countries have proposed bills to their national legislatures that would expose corporations to criminal liability upon convictions of corruption charges, such as Brazil and Chile.¹⁰ Thus, it is imperative that companies doing business in Latin America have an understanding of the array of anti-corruption measures in these jurisdictions and

© 2010 Bloomberg Finance L.P.. All rights reserved. Originally published by Bloomberg Finance L.P. in the Vol. 2, No. 5 edition of the Bloomberg Law Reports—White Collar Crime. Reprinted with permission. Bloomberg Law Reports[®] is a registered trademark and service mark of Bloomberg Finance L.P.

The discussions set forth in this report are for informational purposes only. They do not take into account the qualifications, exceptions and other considerations that may be relevant to particular situations. These discussions should not be construed as legal advice, which has to be addressed to particular facts and circumstances involved in any given situation. The opinions expressed are those of the author. Bloomberg Finance L.P. and its affiliated entities do not take responsibility for the content contained in this report and do not make any representation or warranty as to its completeness or accuracy.

implement robust compliance procedures to ensure that they do not run afoul of such laws.

This article provides a brief overview of the FCPA, the OECD Convention, and the IA Convention and highlights some trends regarding anti-bribery enforcement involving Latin America.

The FCPA

In short, the FCPA is a domestic law that applies extraterritorially to companies and individuals to prohibit bribery of public officials in other countries. The statute consists of two sets of substantive provisions: (i) the anti-bribery provisions; and (ii) the record-keeping and internal controls provisions (the "accounting provisions").

The FCPA divides the universe of potential FCPA defendants into three categories.¹¹ The first are "issuers," defined as companies with securities registered on a national securities exchange, as well as others required to file reports with the SEC, and the officers, directors, employees, and agents of those companies.¹² The second are "domestic concerns," which includes U.S. citizens, nationals and residents, as well as non-issuer business entities that have their principal place of business in the United States or are organized under U.S. laws.¹³ The third category covers "persons other than issuers or domestic concerns," which effectively embraces all other entities and persons.¹⁴

These covered entities are all subject to the same substantive prohibition: it is unlawful for any covered entity to (i) offer, pay, give, promise to pay or give, or to authorize the payment, offer or gift of; (ii) anything of value; (iii) with corrupt intent; (iv) to a foreign official, a foreign political party, a foreign party official, a candidate for foreign political office, or any person while knowing that such person intends to pass the thing of value to a foreign official, party, party official or candidate; (v) in order to influence any act or decision of the foreign official in his official capacity, induce such foreign official to do or omit to do any act in violation of the lawful duty of the official, induce such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, or secure any improper advantage; (vi) in order to assist in obtaining or retaining business for any person.¹⁵ However, unlike the IA Convention discussed *infra*, the FCPA does not criminalize the solicitation or receipt of bribes.¹⁶

The accounting provisions apply to every issuer that has publicly registered securities and all other companies that are required to file reports with the SEC. These provisions are intended to work in tandem with the anti-bribery provisions by requiring that an issuer's books and records accurately reflect its business transactions and assuring that the assets of an issuer are used for proper business purposes.¹⁷ Specifically, issuers must "make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions" of their assets and "devise and maintain a system of internal accounting controls[.]"¹⁸

Although there is no private right of action under the FCPA, the DOJ and SEC have authority to enforce the statute.¹⁹ The DOJ has exclusive authority to prosecute criminal violations of the FCPA, while the DOJ and SEC share jurisdiction over civil enforcement. The SEC has exclusive authority to bring civil actions against "issuers," while the DOJ is empowered to seek civil penalties against "domestic concerns" and "other persons."

The criminal penalties include fines and imprisonment. Under the anti-bribery provisions, an entity faces a maximum criminal fine of \$2,000,000 per offence and individuals who willfully violate these provisions face a maximum criminal fine of \$250,000 per offense, imprisonment of up to five years, or both.²⁰ An entity that willfully violates the accounting provisions is subject to a criminal fine of up to \$25,000,000, while an individual may be criminally fined up to \$5,000,000, imprisoned up to twenty years, or both.²¹

The civil penalties under the FCPA include the imposition of a monetary fine, disgorgement, and injunctive relief. Specifically, the statute provides for civil fines of up to \$10,000 against an entity that violates the anti-bribery provisions as well as against any officer, employee, or agent who willfully violates the anti-bribery provisions.²² Notably, the statute prohibits a business from indemnifying these fines.²³

Anti-Bribery Conventions

After the FCPA's enactment, the U.S. government encouraged its trading partners and various non-governmental organizations to pass similar anti-bribery measures. The two anti-bribery agreements born from this effort that have the most relevance to Latin America are the OECD and IA Conventions. The OECD Convention has 38 signatories, including Argentina, Brazil, Chile, and Mexico.²⁴ The IA Convention has 34 signatories, including Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.²⁵ Neither convention is self-executing and, thus, each requires its signatories to enact national legislation to implement its substantive provisions.

The core criminal conduct prohibited by the OECD Convention is set out in Article 1.1, which obligates member states to make it a crime "for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through an intermediary, to a foreign public official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business."²⁶ The OECD Convention is broader than the FCPA in terms of the entities that fall within its scope. Unlike the FCPA, the convention prohibits bribes made by "any person," which includes any natural person or legal entity, regardless of their nationality, domicile, place of incorporation, or principal place of business.²⁷ Member states are also obligated to establish the criminal offenses of aiding and abetting foreign bribery and attempt and conspiracy to commit acts of foreign bribery.²⁸ Pursuant to Article 2, member states must enact legislation that imposes criminal liability upon legal entities.²⁹ Moreover, member states are

obligated to render legal assistance to other member states for the purposes of criminal or civil investigations that fall within the scope of the convention.³⁰

The IA Convention requires the criminalization of a broad range of corruption, including the bribery of foreign public officials.³¹ Unlike the FCPA, the convention covers the solicitation or acceptance of a bribe by a government official.³² The IA Convention also criminalizes the illicit enrichment of government officials, which is defined as the "significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earning during the performance of his functions."³³ Like the OECD Convention, the IA Convention calls for broad cooperation among member states, obligating them to provide the "widest measure" of mutual legal assistance in connection with any investigation covering these crimes.³⁴

Pursuant to these conventions, Latin American countries, including those with the largest economies, such as Argentina, Brazil, Mexico, and Chile, have amended their laws to criminalize the bribery of foreign public officials.³⁵ However, according to Transparency International, as of June 2009, these countries have engaged in little or no enforcement of these laws.³⁶ Specifically, Argentina and Brazil each had one active case, while Chile and Mexico had none.³⁷ One major obstacle to full implementation is that many countries, such as Argentina, have not passed laws creating criminal liability for corporations for the offense of foreign bribery of public officials.³⁸ However, the status quo may be changing, as Brazil and Chile have recently submitted bills to their national legislatures that would impose such liability and accompanying penalties.³⁹

Trends in Anti-Bribery Enforcement Involving Latin America

At least four principal trends emerge from the recent enforcement and implementation of anti-bribery laws involving Latin America.

First, the DOJ and SEC broadly construe the term "foreign official," thereby increasing the risk that business transactions with certain parties who seemingly have no government affiliation may trigger FCPA risks.⁴⁰ It appears that no court has expressly ruled on the definitional scope of this term.⁴¹ But, the DOJ and SEC's charging documents and complaints these agencies' expansive reading of the term. Employees and officials of state-owned oil companies,⁴² officials of a state-owned electric utility company,⁴³ and a board member of a state telecommunications authority⁴⁴ are among the persons who, according to the DOJ and SEC, qualify as "foreign officials."⁴⁵

Second, recent criminal and civil proceedings teach that the oil, infrastructure, and telecommunications industries are particularly prone to FCPA risks in light of the ownership interests that Latin American states have in these sectors.⁴⁶ On a related note, many FCPA cases involve the use of third-party intermediaries, such as customs brokers and sales agents, who act as a conduit between the payer and payee of the bribe.⁴⁷

Third, the DOJ and SEC are increasingly targeting individuals.⁴⁸ In 2009, the DOJ and SEC charged more individuals with FCPA violations than in any previous year and this

enforcement strategy has extended into this year.⁴⁹ This should come as no surprise since the DOJ has emphasized that "prosecutions of individuals is a cornerstone of [its] enforcement strategy."⁵⁰

Fourth, U.S. authorities and their counterparts in foreign jurisdictions appear to have increased their cooperation, opening up the possibility that companies may face multiple investigations in separate jurisdictions.⁵¹ As Latin American countries continue to enact laws to implement the OECD and IA Conventions, it is likely that the degree of cooperation will only increase. Indeed, the DOJ is engaging in an "unprecedented level" of collaboration with respect to foreign corruption investigations with its foreign counterparts.⁵² The same is true at the SEC. Cheryl Scarborough, Chief of the SEC's FCPA Unit, recently noted that the unit is working closely with foreign officials of OECD member nations on corruption investigations and will encourage these officials to cooperate more extensively in the future.⁵³

Recent criminal and civil enforcement actions involving the region illustrate these trends.

- *United States v. Warwick*, No. 3:09-cr-00449 (E.D. Vir. 2009). On February 10, 2010, John W. Warwick, a former president of a Virginia-based company, pleaded guilty to one count of conspiring to make corrupt payments to foreign government officials to secure contracts for the maintenance of lighthouses and buoys along Panama's waterway in violation of the FCPA. Warwick admitted that, from 1997 through July 2003, he and others conspired to bribe the former administrator and deputy administrator of the Panama Maritime Authority and a former, high-ranking elected executive official of the Republic of Panama. As part of his plea agreement, Warwick must forfeit \$331,000, which represents the proceeds of his crime.⁵⁴
- *SEC v. Benton*, No. 4:09-cv-03963 (S.D. Tex. 2009). On December 11, 2009, the SEC filed a complaint against Bobby Benton, a former Vice President of an offshore drilling company, alleging violations of FCPA's anti-bribery and accounting provisions and aiding-and-abetting violations of these provisions, as well. Specifically, the complaint alleges that Benton covered up a \$384,000 bribe paid to an official of Venezuelan's state-owned oil company to secure extensions of three drilling contracts, authorized a \$10,000 bribe to a third-party knowing that these funds would be given to a Mexican customs official in return for favorable customs treatment, and signed a false certification in connection with an audit of his company's financial statements knowing that a company agent paid a \$15,000 bribe to a Mexican customs official. The SEC seeks a civil penalty, a permanent injunction, disgorgement, and prejudgment interest.⁵⁵
- *United States v. O'Shea*, No. 4:09-cr-00629 (S.D. Tex. 2009). On November 16, 2009, the DOJ charged John J. O'Shea, a former general manager of a Texas-based subsidiary of a firm in the electrical utilities industry, with one count of conspiring to violate the FCPA and twelve counts of violating the anti-bribery provisions of the FCPA. The indictment alleges that O'Shea conspired to bribe and authorized bribes of Mexican officials at the Comisión Federal de Electricidad, an electric utility owned by the Mexican government, to secure contracts for the maintenance and upgrading of certain electric network systems. The DOJ seeks forfeiture of nearly \$3,000,000 from O'Shea, which represents the proceeds of his alleged crimes.⁵⁶

- *United States v. Control Components, Inc.*, No. 09-cr-00162 (C.D. Cal. 2009). On July 31, 2009, Control Component Inc. ("CCI"), a California-based company that manufactures valves used in the energy industry, pleaded guilty to violations of the FCPA and agreed to pay a criminal fine of \$18,200,000, implement an anti-bribery compliance program, and retain an independent compliance monitor for three years. CCI admitted that, from 2003 through 2007, it made approximately 236 corrupt payments in 36 countries, including Brazil, totaling approximately \$6,850,000 and resulting in net profits of approximately \$46,500,000. The payments were made to officers and employees of state- and privately-owned companies, including Brazil's Petrobras, a semi-public energy company. Eight of CCI's former executives were also charged with FCPA violations.⁵⁷
- *SEC v. Nature's Sunshine Products, Inc.*, No. 2:09-cv-00672 (D. Utah 2009). On July 31, 2009, the SEC settled FCPA claims with Nature's Sunshine Product Inc. ("Nature's"), a manufacturer of nutritional and personal care products, and two of its executive officers. The complaint alleged, among other things, that a wholly-owned subsidiary of Nature's paid bribes to Brazilian customs officials to import unregistered products into Brazil. Without admitting or denying the allegations of the complaint, the defendants agreed to the entry of consent judgments enjoining them from future FCPA violations. Nature's also agreed to pay a civil penalty of \$600,000 and its two officers each agreed to pay a civil penalty of \$25,000.⁵⁸
- *United States v. Latin Node, Inc.*, No. 09-cr-20239 (S.D. Fl. 2009). On April 7, 2009, Latin Node, Inc., a privately-held Florida corporation that provided telecommunications services, pleaded guilty to one count of violating the FCPA's anti-bribery provisions and agreed to pay a \$2,000,000 criminal fine. The FCPA violation was discovered by eLandia International, Inc., a Florida-based company in the information and communications technology industry, after it had acquired Latin Node. Latin Node admitted that, between March 2004 and June 2007, it paid or caused to be paid approximately \$1,100,000 to third parties with the knowledge that this money would be used to bribe officials of Hondutel, a Honduran state-owned telecommunications company, in exchange for the award of contracts.⁵⁹
- *United States v. Hioki*, No. 4:08-cr-00795 (S.D. Tex. 2008). On December 8, 2008, Misao Hioki, a former general manager at a U.S. subsidiary of the Japanese-based manufacturer of marine hoses used to transfer oil and other rubber products, pleaded guilty to antitrust violations and conspiracy to bribe government officials in Argentina, Brazil, Ecuador, Mexico, and Venezuela in violation of the FCPA. The DOJ charged Hioki with approving bribes to employees of state-owned businesses through local sales agents to secure contracts for his company. Hioki was sentenced to serve two years in jail and must pay an \$80,000 criminal fine.⁶⁰

Helmerich & Payne. On July 30, 2009, Helmerich & Payne ("H&P"), an Oklahoma-based oil and gas driller, entered into a two-year deferred prosecution agreement with the DOJ under which H&P must pay a \$1,000,000 criminal penalty. In a related SEC administrative proceeding, H&P settled civil FCPA claims and agreed to disgorge \$320,604 plus prejudgment interest of \$55,077.22 for violating the FCPA's accounting provisions. H&P was alleged to have made improper payments – either directly or indirectly through customs brokers – to customs officials in Argentina and Venezuela in exchange for favorable customs treatment with respect to drilling equipment.⁶¹

Conclusion

Companies transacting business in Latin America will increasingly face anti-bribery issues as U.S. authorities devote more resources to FCPA enforcement and as Latin American countries enact legislation to implement the OECD and IA Conventions. Those companies that best understand the risks associated with these laws and proactively implement compliance policies will possess a competitive advantage to doing business in the region.

Hector Gonzalez is a litigation partner in Mayer Brown's New York office. Mr. Gonzalez represents corporations and corporate executives in all aspects of criminal and related civil and administrative matters, SEC and CFTC enforcement proceedings, internal investigations, state and federal grand jury investigations, and state attorneys general investigations. A former federal prosecutor for the Southern District of New York, Mr. Gonzalez has tried more than 20 federal and state jury trials, including RICO, public corruption, and bribery cases, and argued more than 30 cases in federal and state appellate courts. He can be reached at hgonzalez@mayerbrown.com or (212) 506-2114.

Mauricio España is a senior litigation associate in Mayer Brown's New York office. His practice focuses on a wide range of complex litigations in federal, state, and administrative courts. Specifically, Mr. España counsels clients in cases dealing with complex commercial disputes, securities fraud actions, internal corporate investigations, federal and state agency general investigations, broker dealer—customer disputes, white collar criminal defense, and obtaining discovery in the U.S. for use in foreign litigations. He is also a member of the firm's Latin America Practice. Mr. España can be reached at mespana@mayerbrown.com or (212) 506-2277.

James Ancone is a litigation associate in Mayer Brown's New York office. He can be reached at jancone@mayerbrown.com or (212) 506-2353.

¹ See Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. §§ 78dd-1, -2, and -3 (2000)). The FCPA was amended in 1988, 1994, and 1998. See International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105-366, 112 Stat. 3302 (codified as amended at 15 U.S.C. §§ 78dd-1, -2, and 78ff(c) (2000)); Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796 (codified as amended at 15 U.S.C. §§ 78dd-1, -2, and -3 (2000)); Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (codified as amended at 15 U.S.C. §§ 78dd-1, -2, and 78ff(c) (2000)).

² See Lanny A. Breuer, Assistant U.S. Attorney, Criminal Div., U.S. Dep't of Justice, Remarks to the National Association of Criminal Defense Lawyers at the 5th Annual "Defending the White Collar Case – In and Out of Court" Seminar (Oct. 1, 2009).

³ See Robert Khuzami, Director, Div. of Enforcement, U.S. Sec. & Exch. Comm'n, Remarks Before the New York City Bar: My First 100 Days as Director of Enforcement (Aug. 5, 2009).

⁴ See Jesse Sunenblick, *Q&A with Cheryl Scarborough*, Feb. 25, 2010, www.mainjustice.com.

⁵ See *Brazil's Recovering Economy: Joining in the Carnival Spirit the Government Will be Less Abstemious Than It Claims*, *The Economist*, Feb. 11, 2010, available at www.economist.com (last visited March 12, 2010).

visited Mar. 12, 2010); OAS, Department of Legal Cooperation, www.oas.org/juridico/english/corr_bg.htm.

³⁶ See TI 2009 Report at 10.

³⁷ See *id.* at 11.

³⁸ See *id.* at 13.

³⁹ See *id.* at 21, 24.

⁴⁰ The FCPA defines "foreign official" as "any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of" any of the foregoing arms of a foreign government or a public international organization. 15 U.S.C. §§ 78dd-1(f)(1)(A), 78dd-2(h)(2)(A), 78dd-3(f)(2)(A).

⁴¹ Despite the lack of case law on point, one commentator has suggested that the Federal Tort Claims Act, the domestic bribery statute, and the case law construing these statutes may provide some guidance on the scope of the terms "officer" and "employee" under the FCPA. See Zarin, *supra* note 27 at § 4:4.1. Similarly, the Foreign Sovereign Immunities Act and the case law thereunder may be instructive in construing the terms "agency" and "instrumentality." See *id.* § 4:4.2.

⁴² See Exhibit A to Plea Agreement, dated Dec. 17, 2008, at ¶ 3 in *United States v. Covino*, No. 08-cr-336 (C.D. Cal. 2008) (employees of Petrobras, an oil company in which the Brazilian government has a majority stake); Indictment, dated Jan. 17, 2008, at ¶¶ 5, 19 in *United States v. James K. Tillery*, No. 08-cr-022 (S.D. Tex. 2008) (officials of PetroEcuador, the national oil company of Ecuador); see also Information, filed Dec. 8, 2008, at ¶ 16(d) in *United States v. Hioki*, No. 4:08-cr-00795 (S.D. Tex. 2008) ("employees of government-owned businesses" in Argentina, Brazil, Ecuador, Mexico, and Venezuela).

⁴³ See Indictment, filed Nov. 16, 2009, at ¶¶ 5, 6 in *United States v. O'Shea*, No. 4:09-cr-00629 (S.D. Tex. 2009) (officials at the Comisión Federal de Electricidad, an electric utility company owned by the Mexican government).

⁴⁴ See Superseding Indictment, filed Mar. 20, 2007, at ¶¶ 7, 8 in *United States v. Sapsizian*, No. 1:06-cr-20797 (S.D. Fl. 2006) (director of El Instituto Costarricense de Electricidad, a state-owned telecommunications authority in Costa Rica).

⁴⁵ The range of persons the DOJ and SEC consider to be "foreign officials" in other geographic regions is equally expansive. See, e.g., Information, filed Feb. 6, 2009, at ¶ 13 in *United States v. Kellogg Brown & Root LLC*, No. 4:09-cr-00071 (S.D. Tex. 2009) (officers and employees of Nigerian National Petroleum Corporation); Compl., filed June 3, 2008, at ¶ 12 in *United States v. AGA Medical Corp.*, No. 0:08-cr-00172-1 (D. Minn. 2008) (physicians employed by "[g]overnment-owned and controlled hospitals in China"); Compl., dated Dec. 11, 2007, at ¶ 8 in *SEC v. Philip*, No. 07-cv-1836 (D. Or. 2007) (managers of steel mills that were "at least partially government-owned"); Compl., dated Aug. 23, 2007, at ¶ 29 in *SEC v. Textron, Inc.*, No. 1:07-cv-01505 (D.D.C. 2007) (employees of subsidiaries of the Abu Dhabi National Oil Company).

⁴⁶ See, e.g., *SEC v. Benton*, No. 4:09-cv-03963 (S.D. Tex. 2009); *United States v. O'Shea*, No. 4:09-cr-00629 (S.D. Tex. 2009); *United States v. Control Components, Inc.*, No. 09-cr-00162 (C.D. Cal. 2009); *United States v. Latin Node, Inc.*, No. 09-cr-20239 (S.D. Fl. 2009); *United States v. Hioki*, No. 4:08-cr-00795 (S.D. Tex. 2008); *Helmerich & Payne*.

⁴⁷ See, e.g., *SEC v. Benton*, No. 4:09-cv-03963 (S.D. Tex. 2009); *United States v. Control Components, Inc.*, No. 09-cr-00162 (C.D. Cal. 2009); *SEC v. Nature's Sunshine Products, Inc.*, No. 2:09-cv-00672 (D. Utah 2009); *United States v. Hioki*, No. 4:08-cr-00795 (S.D. Tex. 2008); *Helmerich & Payne*; see also OECD Working Group on Bribery in Int'l Bus. Transactions, Typologies on the Role of Intermediaries in Int'l Bus. Transactions 4 (2009) (noting that "intermediaries are involved in most foreign bribery cases").

⁴⁸ See, e.g., *United States v. Warwick*, No. 3:09-cr-00449 (E.D. Vir. 2009); *SEC v. Benton*, No. 4:09-cv-03963 (S.D. Tex. 2009); *United States v. O'Shea*, No. 4:09-cr-00629 (S.D. Tex. 2009); *United States v. Hioki*, No. 4:08-cr-00795 (S.D. Tex. 2008).

⁴⁹ See Lanny A. Breuer, Assistant U.S. Attorney, Criminal Div., U.S. Dep't of Justice, Prepared Address to the 22nd National Forum on the Foreign Corrupt Practices Act (Nov. 17, 2009).

⁵⁰ Lanny A. Breuer, Assistant U.S. Attorney, Criminal Div., U.S. Dep't of Justice, Remarks at the American Bar Association National Institute on White Collar Crime (Feb. 25, 2010).

⁵¹ See, e.g., Press Release, U.S. Dep't of Justice, Two Florida Businessmen Plead Guilty to Participating in a Conspiracy to Bribe Foreign Government Officials and Money Laundering (May 15, 2009), available at: www.justice.gov/usao/fls/PressReleases/090515-04.html (last visited Mar. 12, 2010).

⁵² See Breuer, *supra* note 2.

⁵³ See Sunenblick, *supra* note 4.

⁵⁴ See Plea Agreement, dated Dec. 15, 2009, at ¶ 1, in *United States v. Warwick*, No. 3:09-cr-00449 (E.D. Vir. 2009); see also Press Release, U.S. Dep't of Justice, Virginia Man Pleads Guilty to Bribing Former Panamanian Government Officials in Connection with Maritime Contract (Feb. 10, 2010), available at: www.justice.gov/opa/pr/2010/February/10-ag-134.html (last visited Mar. 12, 2010).

⁵⁵ See Compl., dated Dec. 10, 2009, at ¶¶ 1–7, 10–27 in *SEC v. Benton*, No. 4:09-cv-03963 (S.D. Tex. 2009).

⁵⁶ See Indictment, filed Nov. 16, 2009, at ¶¶ 2–12, 14–15 in *United States v. O'Shea*, No. 4:09-cr-00629 (S.D. Tex. 2009).

⁵⁷ See Plea Agreement, filed July 22, 2009, at ¶ 1 in *United States v. Control Components, Inc.*, No. 09-cr-00162 (C.D. Cal. 2009); Indictment, filed Apr. 8, 2009, at ¶¶ 3–13 in *United States v. Carson*, No. 09-cr-00077 (C.D. Cal. 2009); Plea Agreement, dated Jan. 6, 2009, at ¶ 3 in *United States v. Morlok*, No. 09-cr-00005 (C.D. Cal. 2009); Plea Agreement, dated Dec. 17, 2008, at ¶ 3 in *United States v. Covino*, No. 08-cr-00336 (C.D. Cal. 2008).

⁵⁸ See Final Judgments, dated July 31, 2009 in *SEC v. Nature's Sunshine Products, Inc.*, No. 2:09-cv-00672 (D. Utah 2009).

⁵⁹ See Plea Agreement, dated Apr. 3, 2009, at ¶ 1 in *United States v. Latin Node, Inc.*, No. 09-cr-20239 (S.D. Fl. 2009); see also Press Release, U.S. Dep't of Justice, Latin Node, Inc. Pleads Guilty to Foreign Corrupt Practices Act Violation and Agrees to Pay \$2 Million Criminal Fine (Apr. 7, 2009), available at: <http://www.justice.gov/opa/pr/2009/April/09-crm-318.html>.

⁶⁰ Plea Agreement, dated Dec. 8, 2008, at ¶¶ 2–3 in *United States v. Hioki*, No. 4:08-cr-00795 (S.D. Tex. 2008); see also Press Release, U.S. Dep't of Justice, Japanese Executive Pleads Guilty, Sentenced to Two Years in Jail for Participating in Conspiracies to Rig Bids and Bribe Foreign Officials to Purchase Marine Hose and Related Products (Dec. 10, 2008), available at www.justice.gov/opa/pr/2008/December/08-at-1084.html (last visited Mar. 12, 2010).

⁶¹ See Non-Prosecution Agreement, dated July 29, 2009; In re Helmerich & Payne, Inc., Exchange Act Release No. 60400, Accounting and Auditing Enforcement Release No. 3026, Administrative Proceeding No. 3-13565 (July 30, 2009), available at www.sec.gov/litigation/admin/2009/34-60400.pdf (last visited Mar. 12, 2010).