UNITED STATES: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

December 2012

This report, submitted by the United States, provides information on the progress made by the United States in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 20 December 2012.

The Phase 3 report evaluated the United State's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

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Summary of findings

1. Since the Phase 3 evaluation of the United States in October 2010, the US has continued to robustly enforce the Foreign Corrupt Practices Act (FCPA). The Securities and Exchange Commission (SEC) brought 29 separate civil actions against corporate entities, and the Department of Justice (DOJ) brought 38 separate actions resolving criminal investigations into corporate entities.

2. During this time period, more than 15 individuals were charged with FCPA or related crimes, and terms of imprisonment were imposed against numerous individuals, with sentences ranging up to 15 years. Criminal fines against corporations were imposed in 38 cases, ranging from USD 32,000 to USD 218.8 million, and totalled USD 762.9 million. Civil penalties, including disgorgement and prejudgement interest, were imposed in 32 cases, ranging from USD 35,000 to USD 46.8 million, and a total of USD 353.1 million. Companies voluntarily disclosed in numerous cases, and in all the corporate cases that were resolved by DPAs or NPAs, the defendants cooperated extensively in the investigations. Compliance programs were imposed for all of the DOJ resolutions, and independent compliance monitors or compliance consultants were imposed in five DOJ resolutions.[1]

3. The US has taken steps since the Phase 3 evaluation to implement all except for one of the Working Group on Bribery's (WGB's) recommendations. For example, recommendation 1 regarding the statute of limitations was considered fully met by the WGB because of the large volume of cases completed by US prosecutors during the relevant period. Nevertheless, because the United States has declined to bring criminal charges in some cases, in part due to the lack of admissible evidence obtained prior to the termination of the statute of limitations, the WGB encouraged the US to consider increasing the length of the statute.

4. The US has extensively consulted with the private sector and civil society on its policies and approach on facilitation payments. The US has also begun publishing much more extensive information about the use of NPAs and DPAs, including the reasons for choosing to use them in specific cases. Steps have also been taken to improve the efficiency of communication between the DOJ and agencies responsible for public procurement and arms export licensing, to ensure that, where appropriate, the independent debarment authorities can determine whether persons and companies convicted of violating the FCPA should be debarred from public procurements and denied arms export licenses.

5. The US has made significant efforts to raise SMEs awareness of measures for preventing and detecting the bribery of foreign public officials, including through a series of roundtables designed to specifically reach SMEs, among others, improvements to DOJ's and the Securities and Exchange Commission's (SEC's) websites on the FCPA, and compliance academies given by the FBI. Efforts have also been increased to raise awareness of the SEC's diligent pursuit of books and records and internal controls violations under the FCPA, including misreported facilitation payments. For instance, press releases and copies of relevant documents are posted on the DoJ's and SEC's websites and extensive training has been provided.

6. A major initiative of the United States has been preparation of the 'Resource Guide to the FCPA', which will consolidate and summarise information available in various forms about FCPA enforcement

[1] Of the criminal cases that went to trial and resulted in convictions, there have been some appeals. In addition, in two criminal cases charges were dismissed, and in one of those cases acquittals were also obtained.

into a more easily accessible format. To prepare the Guide, the US has undertaken extensive consultations, including with the private sector and civil society. Finalisation of the Guide is expected shortly, but until it is published, the WGB cannot consider its recommendations on consolidating and summarising FCPA enforcement information, or revision of the Criminal Resource Manual on the 'business nexus test', fully implemented.[2] The WGB therefore looks forward to the opportunity to review the 'Resource Guide to the FCPA', and encourages the US to include in the Guide reference to the decision of US v. Kay on the 'business nexus test', and clarification of the application of the FCPA to the bribery of employees of state-owned/controlled enterprises.

7. The WGB did not consider that the US made sufficient progress on its recommendation to clarify the policy on dealing with claims for tax deductions for facilitation payments, and give guidance to help tax auditors identify payments claimed as facilitation payments that are in fact in violation of the FCPA and/or signal that corrupt conduct in violation of the FCPA is also taking place.

Conclusions

8. The WGB concluded that the United States has fully implemented recommendations 1, 2a, 3a, 3b, 4, 5 and 6, partly implemented recommendations 2b and 2c, and has not yet implemented recommendation 7. In addition, in March 2013, the US will report on publication of the 'Resource Guide to the FCPA', at which time the WGB will assess whether it effectively implements recommendations 2b and 2c.

[2] Following discussion of this Report in the Working Group on Bribery, and prior to its publication, the United States DOJ and SEC published the following document on 14 November 2012: "FCPA: A Resource Guide to US Foreign Corrupt Practices Act" on the following weblinks: http://www.justice.gov/criminal/fraud/fcpa/guidance/ and http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf.

WRITTEN FOLLOW UP TO PHASE 3 REPORT – UNITED STATES

Name of country: UNITED STATES

Date of approval of Phase 3 Report: 15 October 2010

The Working Group on Bribery adopted its Phase 3 report on enforcement of the Anti-Bribery Convention by the United States on October 15, 2010. Since then, the United States, through U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC), has maintained a robust enforcement effort, producing significant fines, disgorgements and other financial penalties against corporations for violations of the Foreign Corrupt Practices Act (FCPA). In the last two years, SEC enforcement actions have resulted in almost $340 million dollars recovered in 33 separate actions, while DOJ enforcement actions have resulted in nearly $750 million dollars in penalties in 31 separate actions. In addition, DOJ and SEC have continued to pursue individuals criminally and civilly, when appropriate. Those efforts have resulted in numerous convictions and some significant prison sentences, including a number of sentences ranging from three to 15 years' imprisonment. The United States has also prevailed in a series of legal challenges to its FCPA enforcement, including successfully defending its interpretation of various provisions of the statute. Further, the United States has continued its efforts to clarify outstanding legal issues and raise awareness of the importance of fighting bribery in discussions with business groups and other interested parties.

The United States welcomes this opportunity to update the Working Group on its response to the Phase 3 recommendations.

Date of information:

Part I: Recommendations for Action

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

Text of recommendation 1:

9. Regarding the statute of limitations, the Working Group recommends that the United States ensure that the overall limitation period applicable to the foreign bribery offence is sufficient to allow adequate investigation and prosecution (Convention, Article 6).

Actions taken as of the date of the follow-up report to implement this recommendation:

As an initial matter, as the Working Group is aware, the standard term for the statute of limitations for federal crimes is five years. 18 U.S.C. § 3282. That term can be extended by up to three years in cases where information is formally sought in a foreign country. 18 U.S.C. § 3292. Because most FCPA cases

will involve foreign evidence, the effective statute of limitations in practice for many FCPA cases is more than five years. In two FCPA cases since the Phase 3 Report, prosecutors used this provision to bring FCPA charges, and the use of 18 U.S.C. § 3292 was challenged in court and successfully defended. *See United States v. O'Shea*, 09-cr-629, ECF No. 107 (S.D. Tex. 2011); *United States v. Esquenazi*, 09-cr-21010, ECF No. 239 (S.D. Fla. 2010).

As noted in the Phase 3 report, the statute of limitations does not affect the SEC in the same way. It does not prevent the SEC from bringing an action to enforce the FCPA's anti-bribery, books and records, or internal controls provisions. It also does not affect the SEC's ability to obtain disgorgement and pre-judgment interest of illicit gains obtained from the violations. However, the statute of limitations can impact the SEC's ability to obtain a civil penalty for conduct older than five years. 28 U.S.C. § 2462.

Moreover, DOJ and SEC have conducted training both internally and at annual joint training sessions that identifies best practices regarding methods of investigation by its prosecutors, law enforcement agents, and staff attorneys to ensure that investigations can be timely completed and charges brought before the applicable statute of limitations expires, including taking advantage of tolling where available and appropriate.

Additionally, DOJ is considering measures to extend the statute of limitations through possible legislative action to further ensure adequate time within which to investigate these complex international schemes.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

10. Concerning the foreign bribery offences in the FCPA, for the purpose of further increasing effectiveness of combating the bribery of foreign public officials in international business transactions, the Working Group recommends that the United States:

a. In its periodic review of its policies and approach on facilitation payments pursuant to the 2009 Anti-Bribery Recommendation, consider the views of the private sector and civil society, particularly on ways of clarifying the 'gray' areas identified by them (Convention, Article 1, 2009 Anti-Bribery Recommendation VI.i).

Actions taken as of the date of the follow-up report to implement this recommendation:

The United States has taken significant action to follow up on this recommendation. During the past two years, U.S. Government officials, including General Counsel of the Department of Commerce Cameron Kerry, DOJ Assistant Attorney General Lanny Breuer, and SEC Enforcement Director Robert Khuzami, have hosted numerous roundtables on the FCPA that included discussions on the issue of facilitating payments. The purpose of these roundtables was to hear from interested parties about their experiences with and views on the FCPA. We have had meetings with representatives of the U.S. and foreign business communities, investor groups, and interested non-profit organizations. We have been encouraged by the

large turnout, the frank conversation, and the clear dedication of all participants to address the corrosive impact of corruption on international commerce.

For example, during the past two years, U.S. government representatives have spoken with more than 100 public and private company representatives from a wide range of business sectors, sizes, and geographic locations. Participants were recommended and/or selected by business associations, including ethics and compliance organizations, with an interest in this area. We also met with private practitioners selected by committees of the American Bar Association focused on foreign bribery issues. In meetings organized by the U.S. Department of Commerce at various locations overseas, DOJ, SEC, and Commerce officials have hosted roundtables with U.S and foreign businesses to discuss particular areas of concern regarding the enforcement of the FCPA. Similarly, in separate meetings with civil society groups, investor groups, and non-profit organizations, we learned of the broader concerns of those interested in U.S. efforts to combat corruption and how we can best clarify the law – both through additional enforcement efforts and greater clarity in our resolutions. We will continue to consult with the private sector and other interested parties as we move forward.

In all of these meetings, we engaged in an open and very constructive dialogue focused on a wide range of topics, including facilitation payments. We heard an array of concerns, complaints, and compliments about the FCPA, its enforcement, and related guidance. We also heard some new ideas for providing information, such as improvements to relevant DOJ and SEC websites and using hypothetical examples to explain certain concepts.

Having carefully reviewed and considered the substantial feedback received on the issue of facilitating payments, the U.S. position on facilitating payments, as set forth in our publicly available responses to our Phase 3 questionnaire, has not changed. The feedback gained from these meetings has also played an important role in informing our approach to drafting *A Resource Guide to the FCPA*, the forthcoming guide co-authored by DOJ and SEC and discussed in more detail below. For example, the *Guide* will address a number of topics highlighted as important by meeting participants, such as facilitating payments; the reasonable and bona fide promotional expenditures exception; gifts, travel, and entertainment expenses; and compliance programs.

In terms of facilitating payments specifically, the forthcoming *Guide* will discuss in detail facilitating payments, including discussing relevant cases, examples of routine governmental action, and a sample hypothetical. It will also emphasize the Working Group on Bribery's 2009 Recommendation that signatories encourage companies to prohibit or discourage the use of facilitating payments, which the United States has done regularly, and it will underscore that such payments may violate local law and violate other countries' foreign bribery laws. Furthermore, the *Guide* will remind companies that facilitating payments must still be properly recorded in an issuer's books and records.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

2. Concerning the foreign bribery offences in the FCPA, for the purpose of further increasing effectiveness of combating the bribery of foreign public officials in international business transactions, the Working Group recommends that the United States:

    b. Consolidate and summarise publicly available information on the application of the FCPA in relevant sources, including on the affirmative defence for reasonable and bona fide expenses in recent Opinion Procedure Releases and enforcement actions (Convention, Article 1); and

Actions taken as of the date of the follow-up report to implement this recommendation:

As the Working Group noted, there is a great deal of publicly available information on the FCPA, including on U.S. Government websites, such as the *Lay Person's Guide*. Nevertheless, the United States affirmed in October 2010 that it would work toward consolidating and summarizing such available information into a more easily accessible format. To that end, DOJ and SEC are finalizing *A Resource Guide to the FCPA*. The *Guide* is co-authored by DOJ and SEC, and it has benefited from the input of many interagency partners, including the Departments of Commerce and State. DOJ and SEC expect to release the *Guide* in Fall 2012. The *Guide* will contain information about the FCPA's history and key provisions, will discuss DOJ's and SEC's enforcement efforts, and will provide information about related issues, including the importance of an effective compliance program in order to detect and prevent FCPA violations. The *Guide* will be an unprecedented resource, providing lawyers, the business community, and ordinary citizens alike a substantive discussion of the FCPA and its application. This has been a substantial effort, as the *Guide* will be comprehensive and detailed on the one hand for more experienced readers yet provide practical advice, meaningful examples, and helpful lists on the other hand for less experienced readers.

Responsive to Recommendation 2(b), the *Guide* will have sections both on explaining how gifts, travel, entertainment and other things of value can constitute bribes under the FCPA and how the reasonable and bona fide expenditures exception applies. The *Guide* will discuss prior enforcement actions and prior FCPA opinion releases that explain these categories of payments. It will also contain a series of variations of a hypothetical example to help companies understand the difference between bribes in the form of gifts, travel, or entertainment, and legitimate business expenses.

In addition, there are over 50 opinion releases DOJ has issued since 1980, which are all available on DOJ's website and each of which provides guidance from DOJ on a particular set of facts. DOJ heard from the private sector during our meetings that having summaries and an index would be helpful, particularly for small and medium enterprises (SMEs), to more easily access this information in the opinion releases. In response, DOJ is in the process of finalizing summaries of all of these opinion releases and an index, which will be available on DOJ's website, to make them more easily accessible, particularly for SMEs, For example, the index will identify all of the opinion releases discussing gifts, travel, and entertainment and/or reasonable, bona fide business expenses. Moreover, DOJ has now added its FCPA-related enforcement actions on its website back to 1977; previously the cases went back to 1998.

In December 2011, SEC unveiled a new "Spotlight on the FCPA" page on its website that contains information about SEC's enforcement of the FCPA, including the text of the statute, links to an SEC investor bulletin on the FCPA issued in the fall of 2010 that explains the FCPA in laymen's terms, and a complete list of all FCPA enforcement cases brought by SEC since the inception of the FCPA, with links to the civil complaint or administrative order and other case materials.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(c):

Concerning the foreign bribery offences in the FCPA, for the purpose of further increasing effectiveness of combating the bribery of foreign public officials in international business transactions, the Working Group recommends that the United States:

c. revise the Criminal Resource Manual to reflect the decision in *U.S. v. Kay*, which supports the position of the United States that the 'business nexus test' in the FCPA can be broadly interpreted, such that bribes to foreign public officials to obtain or retain business or 'other improper advantage in the conduct of international business' violate the FCPA (Convention, Article 1).

Actions taken as of the date of the follow-up report to implement this recommendation:

The provisions in the Criminal Resource Manual relating to the FCPA will be superseded by *A Resource Guide to the FCPA*, and the *Guide* will become the new resource for prosecutors looking for further information on the prosecution of FCPA cases.

Specifically, in response to recommendation 2(c), the *Guide* will discuss the *Kay* decision and the broad application of the business nexus test.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3 (a):

3. Regarding the use of NPAs and DPAs, the Working Group recommends that the United States:

a. Make public any information about the impact of NPAs and DPAs on deterring the bribery of foreign public officials that arises following the Government Accountability Office 2009 Report (Convention, Article 3); and

Actions taken as of the date of the follow-up report to implement this recommendation:

Scholars have recognized that quantifying deterrence is extremely difficult. This is equally true for the deterrent effect of DPAs and NPAs. Thus, as discussed at the time this recommendation was made, measuring "the impact of NPAs and DPAs in deterring the bribery of foreign public officials" would be a difficult task, save providing certain anecdotal and other circumstantial evidence.

One of the best sources of anecdotal evidence demonstrating that DPAs and NPAs have a deterrent effect comes from the companies themselves. The companies against which DPAs and NPAs have been brought have often undergone dramatic changes. For instance, prior to or following the entry of DPAs or NPAs, many companies have terminated personnel, including senior managers, established new codes of conduct and compliance policies and procedures, pledged not to use third-party agents, withdrawn from bids tainted by corruption, provided new and substantial resources to compliance and audit functions within their organizations, and instituted new training regimes. These companies, through their remediation efforts under DPAs and NPAs, have often fundamentally changed how they conduct business. In addition, just like with individuals on parole or probation, the monitor provisions or self-reporting requirements of DPAs and NPAs are designed to deter future misconduct and, at the same time, ensure that companies meet their obligations. In meetings with board members, chief executive officers, chief financial officers, general counsel, and chief compliance officers, DOJ and SEC have heard directly from these senior leaders about the impact DPAs and NPAs have had on their companies for the better.

Beyond the companies themselves, DOJ and SEC have heard anecdotal stories about the deterrent effect of NPAs and DPAs on other companies and how those resolutions raise awareness of anti-corruption laws. Often those stories come from other corporate leaders who have discussed how their own practices have changed or even whole industries that have changed their behavior for the better. For example, during the course of one investigation, it was revealed that a major multinational corporation's DPA caused another Fortune 50 company to implement an FCPA compliance program. In addition, following DPAs in different cases, companies have come forward to make voluntary disclosures of similar conduct. Many of our DPAs and NPAs are publicized extensively and scrutinized closely by the business community, the legal profession, and the compliance community, among others. The "lessons learned" from these DPAs and NPAs, for example, help raise awareness of compliance risks and failures. The existence of DPAs and NPAs also encourages companies to voluntarily disclose conduct, by providing meaningful rewards to those companies, which enables DOJ and SEC to ensure further specific and general deterrence.

On a related note, on January 13, 2010, SEC announced a series of measures to encourage greater cooperation from individuals and companies through the use of various enforcement tools, including DPAs and NPAs. Extensive information about this initiative, including the framework that SEC uses to evaluate cooperation and whether a DPA or NPA is appropriate, can be found on SEC's website at http://www.sec.gov/spotlight/enfcoopinitiative.shtml

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3 (b):

3. Regarding the use of NPAs and DPAs, the Working Group recommends that the United States:

    b. Where appropriate, make public in each case in which a DPA or NPA is used, more detailed reasons on the choice of a particular type of agreement; the choice of the agreement's terms and duration; and the basis for imposing monitors (Convention, Article 3).

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the U.S. Phase 3 Review, the United States has made a concerted effort to further publicly explain why DOJ allows some companies to resolve criminal investigations through DPAs and NPAs.

For example, on November 4, 2010, DOJ simultaneously resolved investigations into six companies. In each case, DOJ explained within the corporate resolution documents the factors used by DOJ to determine the appropriate form of resolution: plea agreement, DPA, or NPA. These cases, as a set, provided robust guidance to companies concerning the considerations relevant to DOJ in determining how to resolve corporate FCPA cases. *See* Non-Prosecution Agreement at 1-2, *In Re Noble Corporation* (2010); Plea Agreement at 15-16, *United States v. Panalpina, Inc.*, 10-cr-765 (S.D. Tex. 2010); Deferred Prosecution Agreement at 4-7, *United States v. Panalpina World Transport (Holding) Ltd*, 10-cr-769 (S.D. Tex. 2010); Plea Agreement at 14-16, *United States v. Pride Forasol S.A.S.*, 10-cr-771 (S.D. Tex. 2010); Deferred Prosecution Agreement at 4-6, *United States v. Pride Int'l, Inc.*, 10-cr-766 (S.D. Tex. 2010); Deferred Prosecution Agreement at 4, *United States v. Shell Nigeria Exploration and Production Co. Ltd.*, 10-cr-767 (S.D. Tex. 2010); Deferred Prosecution Agreement at 4-6, *United States v. Tidewater Marine Int'l, Inc.*, 10-cr-770 (S.D. Tex. 2010); Deferred Prosecution Agreement at 4-6, *United States v. Transocean Inc.*, 10-cr-768 (S.D. Tex. 2010).

In the past two years, DOJ has also continued its practice of including in its corporate resolution documents the relevant considerations in reaching the particular corporate settlement. *See, e.g.*, Deferred Prosecution Agreement at 3-4, *United States v. Pfizer H.C.P. Corp.*, 12-cr-169 (D.D.C. 2012); Non-Prosecution Agreement at 1, *In Re The NORDAM Group, Inc.* (2012); Deferred Prosecution Agreement at 3, *United States v. Orthofix Int'l, N.V.*, 12-cr-150 (E.D. Tex. 2012); Deferred Prosecution Agreement at 3-4, *United States v. Data Systems & Solutions LLC*, 12-cr-262 (E.D. Va. 2012); Deferred Prosecution Agreement at 2-3, *United States v. Biomet, Inc.*, 12-cr-080 (D.D.C. 2012); Deferred Prosecution Agreement at 4, *United States v. Bizjet International Sales and Support, Inc.*, 12-cr-061 (N.D. Okl. 2012); Non-Prosecution Agreement at 1, *In Re Lufthansa Technik AG* (2012); Deferred Prosecution Agreement at 2-3, *United States v. Smith & Nephew, Inc.*, 12-cr-030 (D.D.C. 2012); Deferred Prosecution Agreement at 3, *United States v. Marubeni Corp.*, 12-cr-022 (S.D. Tex. 2012); Non-Prosecution Agreement at 1, *In Re Deutsche Telekom AG* (2011); Deferred Prosecution Agreement at 3, *United States v. Magyar Telekom, Plc.* (E.D. Va. 2011); Non-Prosecution Agreement at 1, *In Re Aon Corporation* (2011); Plea Agreement at 17, *United States v. Bridgestone Corp.*, 11-cr-651 (S.D. Tex. 2011); Non-Prosecution Agreement at 1, *In Re Armor Holdings, Inc.* (2011); Non-Prosecution Agreement at 1, *In Re Tenaris S.A.* (2011); Deferred Prosecution Agreement at 2-3, *United States v. DePuy (Johnson and Johnson),* 11-cr-099 (D.D.C. 2011); Non-Prosecution Agreement at 1, *In Re Comverse Technology, Inc.* (2011); Deferred Prosecution Agreement at 3-4, *United States v. JGC Corp.*, 11-cr-260 (S.D. Tex. 2011); Deferred Prosecution Agreement at 2-3, *United States v. Tyson Foods, Inc.*, 11-cr-037 (D.D.C. 2011); Deferred Prosecution Agreement at 3-4, *United States v. Maxwell Technology, Inc.*, 11-cr-329 (C.D. Cal. 2011); Deferred Prosecution Agreement at 3, *United States v. Alcatel-Lucent, S.A.*, 10-cr-20907 (S.D. Fla. 2011); Non-Prosecution Agreement at 1, *In Re RAE Systems Inc.* (2010); Deferred Prosecution Agreement at 4-5,

United States v. ABB Ltd, 10-cr-665, (S.D. Tex. 2010); Deferred Prosecution Agreement at 4, *United States v. Snamprogetti Netherlands B.V.* (S.D. Tex. 2010).

With regard to the basis for requiring the retention of an independent corporate monitor, the agreements that require the monitor, including the statement of facts and relevant considerations, often implicitly reflect the reasoning behind the imposition of a monitor. In at least one instance since October 2010, DOJ detailed the basis for requiring an independent monitor in a matter in which DOJ and SEC required a monitor be retained. *See, e.g.*, *United States v. Alcatel-Lucent France, S.A.*, 10-cr-20906 (S.D. Fla. 2011) ECF No. 44 at 23 ("Given the pervasiveness of the corrupt conduct uncovered by the investigation, the long period during which the conduct occurred, and the repeated circumvention of the internal controls of Defendant Alcatel-Lucent's predecessor, Alcatel, the government and Defendant Alcatel-Lucent agree that Defendant Alcatel-Lucent's retention of an independent corporate compliance monitor, as required by the DPA, is appropriate in this matter."). In addition, on May 25, 2010, DOJ Acting Deputy Attorney General Gary G. Grindler issued additional guidance on the use of monitors in NPAs and DPAs, further standardizing DOJ policy.

Moreover, as noted above, in January 2010, SEC announced a cooperation initiative that includes the use of DPAs and NPAs in appropriate circumstances. Extensive information about this initiative, including the framework that SEC uses to evaluate cooperation and whether a DPA or NPA is appropriate, can be found on SEC's website at http://www.sec.gov/spotlight/enfcoopinitiative.shtml In December 2010, SEC entered into its first NPA with a company. The full text of that agreement, *Carter's, Inc.*, can be found on SEC's website at http://www.sec.gov/litigation/cooperation/2010/carters1210.pdf.

In May 2011, SEC entered into its first DPA with a company, which was in an FCPA case. The full text of the DPA, *Tenaris, S.A.*, which explains in detail the company's misconduct and its response, cooperation, and remedial efforts, can be found on SEC's website at http://www.sec.gov/news/press/2011/2011-112-dpa.pdf. Because SEC's jurisdiction is civil and not criminal, in many instances when DOJ uses a DPA or NPA, SEC may resolve a parallel matter through the use of an administrative or judicial proceeding.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4:

4. The Working Group recommends that the United States take appropriate steps to verify that, in accordance with the 2009 Anti-Bribery Recommendation, debarment and arms export license denials are applied equally in practice to domestic and foreign bribery, for instance by making more effective use of the 'Excluded Parties List System' (EPLS) (2009 Anti-Bribery Recommendation XI.i).

Actions taken as of the date of the follow-up report to implement this recommendation:

The Interagency Suspension and Debarment Committee (ISDC) oversees the government-wide system for debarment and suspension from programs and activities involving federal financial and non-financial

assistance and benefits, issues regulations with government-wide criteria and minimum due process procedures when debarring or suspending participants, and enters debarred and suspended participants identifying information on the General Services Administration list of excluded persons, now known as the Excluded Parties List System (EPLS). In February 2012, the Department of Justice met with the ISDC to establish a formal procedure in which information about all corporate criminal cases, including both domestic and foreign bribery, are relayed to the ISDC through the same mechanism. This new mechanism helps ensure that ISDC can equally evaluate those who violate both foreign and domestic bribery. On May 12, 2012, DOJ Deputy Attorney General James M. Cole issued additional guidance on coordination between DOJ and suspension and debarment officials.

The Department of State confirms that it statutorily debars persons, both legal and natural, domestic and foreign, who are convicted of violations of the Arms Export Control Act (AECA) or of conspiracy to violate the AECA pursuant to §38(g)(4) of the AECA and §127.7 of the International Traffic in Arms Regulations (ITAR). Persons indicted and/or convicted under the FCPA and other criminal statutes (including domestic bribery) are evaluated on a case-by-case basis but are generally considered ineligible in accordance with ITAR 120.1 and are placed on a watch list maintained by the Department of State. The Departments of State and Justice coordinate to ensure that the watch list is kept up to date. In addition, when evidence warrants doing so, the Department of State cross-lists parties who have been debarred, including by placing them on the Excluded Parties List System.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation 5:

5. The Working Group recommends that the U.S. pursue additional opportunities to raise awareness with SMEs for the purpose of preventing and detecting foreign bribery (2009 Anti-Bribery Recommendation, III.i).

Actions taken as of the date of the follow-up report to implement this recommendation:

A Resource Guide to the FCPA, discussed above, is being written with SMEs in mind and will be distributed in a manner designed to reach SMEs, in large part in response to the Phase 3 recommendations.

For example, the *Guide* will contain hypothetical examples to aid SMEs in understanding the provisions of the FCPA. Legal terms will be avoided when possible to make the *Guide* understandable to lay persons and lawyers alike. The *Guide* is being purposefully organized to allow users to quickly access the material most relevant to them, with additional detail and examples supplied in endnotes that, whenever possible, provide hyperlinks to sources.

To aid in drafting the *Guide*, DOJ and SEC held a series of round table meetings specifically designed to

reach SMEs, among others. At these meetings, DOJ and SEC listened to the questions, concerns, and suggestions of SMEs, which, in general, were incorporated into or responded to in the *Guide*. As noted above, the Commerce Department also hosted an initial roundtable in direct follow-up to the U.S. Phase 3 recommendations.

In terms of distribution, the *Guide* will be available for free on DOJ's and SEC's websites, among others, and we plan to circulate it through other governmental agencies like the Departments of State and Commerce, the U.S. Small Business Administration, and the U.S. Trade and Development Agency. In addition, we anticipate that hard copies of the *Guide* will be distributed to the Commerce Department to be distributed to companies seeking aid from their local embassy's Commercial Attaché.

DOJ has also made significant improvements to its website, increasing the resources available to SMEs. DOJ is in the process of translating the FCPA into even more languages, which will allow SMEs to distribute the statute to foreign employees and third parties in their native language. DOJ has extended its coverage of cases from 1998 back to 1977. In addition, as explained above, all of DOJ's opinion releases are being summarized and indexed. All of these materials will be available, free of charge, on DOJ's website.

As noted above, SEC recently updated its public website to include a "Spotlight on the FCPA" page, which is designed to be user-friendly to the lay person or SME. It explains in easily understandable terms what the FCPA is and what it requires, what the sanctions can be for violations of the law, and how the law is enforced. The Spotlight page has links to an investor bulletin on the FCPA published by the agency in the fall of 2010 that explains the FCPA in laymen's terms, as well as links to the anti-bribery and record-keeping and internal controls provisions of the FCPA. It also contains a complete list of all FCPA enforcement cases brought by SEC since its inception, with a short summary of each case (for cases brought since 2010), as well as links for all cases to case-related materials, including press releases, complaints and administrative orders, and other relevant documents. All of these materials are available, free of charge, on SEC's website. Together with DOJ's website, these resources provide a wealth of information on the FCPA and the criminal and civil cases brought to enforce the FCPA.

The FBI has also conducted several compliance academies with companies of various sizes in order to raise awareness of the importance of compliance with the FCPA and facilitate the transfer of best practices between companies. DOJ FCPA prosecutors and FBI agents are featured speakers during these events, and the meetings have included healthy exchanges with company representatives about myriad FCPA-related issues.

The Departments of Justice, State, and Commerce and SEC have also sent numerous officials to various anticorruption conferences and outreach sessions to raise awareness among SMEs both domestically and around the globe. For example, the Commerce Department organized and had a senior official speak to a group of SME exporters in North Carolina in June of 2011 and published an article on what the U.S. Government can do to assist U.S. companies when faced with corruption, located on a Commerce Department website and published in *Compliance and Ethics Professional* magazine, a publication of the Society of Corporate Compliance and Ethics typically read by compliance counsel and companies throughout the United States.
See www.corporatecompliance.org, and
http://www.commerce.gov/sites/default/files/documents/2011/august/fcpa_sme_paper_june_2011_0.pdf.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6:

6. The Working Group encourages the U.S. to raise awareness of the diligent pursuit of books and records violations under the FCPA, including for misreported facilitation payments (Convention Article 8 and 2009 Anti-Bribery Recommendation VI.ii and X.A.iii).

Actions taken as of the date of the follow-up report to implement this recommendation:

Since the U.S. Phase 3 Review, the United States has vigorously pursued violations of the FCPA's accounting provisions, specifically its books and records provision and internal controls provision.

See Information at 10-12, *United States v. Orthofix Int'l, N.V.*, 12-cr-150 (E.D. Tex. 2012) (charging internal control violation); Information at 16-20, *United States v. Peterson*, 12-cr-224 (E.D.N.Y. 2012) (charging conspiracy to circumvent internal controls); Information at 4-13, 17, *United States v. Biomet, Inc.*, 12-cr-080 (D.D.C. 2012) (charging conspiracy to commit books and violations and books and records violation); Information 4-10, *United States v. Smith & Nephew, Inc.*, 12-cr-030 (D.D.C. 2012) (charging conspiracy to commit books and records violations); Non-Prosecution Agreement at A-3, *In Re Deutsche Telekom AG* (2011) (admitting facts related to improper booking of bribe payments); Information at 18-19, *United States v. Magyar Telekom, Plc.* (E.D. Va. 2011) (charging books and records violations); Non-Prosecution Agreement at 6-7, *In Re Aon Corporation* (2011) (admitting facts relating to books and records violations); Indictment at 1-47, *United States v. Sharef, et al.*, 11-cr-1056 (S.D.N.Y. 2011) (charging conspiracy to commit books and records violations and circumvent internal controls); Non-Prosecution Agreement, Appendix A at 5-6, *In Re Armor Holdings, Inc.* (2011) (admitting facts related to books and records and internal control violations); Non-Prosecution Agreement at A4, *In Re Tenaris S.A.* (2011) (admitting facts related to books and records violations); Information at 4-14, *United States v. DePuy (Johnson and Johnson),* 11-cr-099 (D.D.C. 2011) (charging conspiracy to commit books and records violations); Non-Prosecution Agreement, Appendix A at 3-7, *In Re Comverse Technology, Inc.* (2011) (admitting facts related to improper booking of bribe payments); Information at 4-11, *United States v. Tyson Foods, Inc.*, 11-cr-037 (D.D.C. 2011) (charging conspiracy to commit books and records violations); Information at 8, *United States v. Maxwell Technology, Inc.*, 11-cr-329 (C.D. Cal. 2011) (charging books and records violation); Information at 46-49, *United States v. Alcatel-Lucent, S.A.*, 10-cr-20907 (S.D. Fla. 2011) (charging internal control and books and records violations); Non-Prosecution Agreement at 9-10, *In Re RAE Systems Inc.* (2010) (admitting facts related to improper booking of bribe payments); Non-Prosecution Agreement at A-11-A-12, *In Re Noble Corp.* (2010) (admitting facts relating to books and records violations); Information at 10-16, *United States v. Panalpina, Inc.*, 10-cr-765 (S.D. Tex. 2010) (charging conspiracy to commit books and records violations and aiding and abetting a books and records violation); Information at 16-21, 22-23, *United States v. Pride Int'l, Inc.*, 10-cr-766 (S.D. Tex. 2010) (charging conspiracy to commit books and records violations and books and records violation); Information at 8-15; *United States v. Pride Forasol S.A.S.*, 10-cr-771 (S.D. Tex. 2010) (charging conspiracy to commit books and records violations and aiding and abetting a books and records violation); Information at 10-16, *United States v. Shell Nigeria Exploration and Production Co. Ltd.*, 10-cr-767 (S.D. Tex. 2010) (charging conspiracy to commit books and records violations and aiding and abetting a books

and records violation); Information at 18-35, *United States v. Tidewater Marine Int'l, Inc.*, 10-cr-770 (S.D. Tex. 2010) (charging conspiracies to commit books and records violations and books and records violation); Information at 15-20, 22-23, *United States v. Transocean Inc.*, 10-cr-768 (S.D. Tex. 2010) (charging conspiracy to commit books and records violations and books and records violations).

See also SEC v. Oracle Corp., 12-cv-4310 (N.D. Cal. 2012) (charging violations of books and records and internal controls provisions); *SEC v. Wyeth LLC*, 12-cv-01304 (D.D.C. 2012) (charging violations of books and records and internal controls provisions); *SEC v. Pfizer Inc*., 12-cv-01303 (D.D.C. 2012) (charging violations of books and records and internal controls provisions); *SEC v. Orthofix Int'l N.V*., 12-cv-00419 (E.D. Tex. 2012) (charging violations of books and records and internal controls provisions); *SEC v. Peterson*, 12-cv-2033 (E.D.N.Y. 2012) (charging violations of anti-bribery, books and records, and internal controls provisions, and aiding and abetting violations of the anti-fraud provisions of the Investment Advisors Act of 1940); *SEC v. Biomet, Inc.,* 12-cv-00454 (D.D.C. 2012) (charging violations of books and records and internal controls provisions); *SEC v. Jackson, et al.,* 12-cv-00563 (S.D. Tex. 2012), (charging aiding and abetting violations of anti-bribery provisions and books and records and internal controls provisions); *SEC v. O'Rourke,* 12-cv-00564 (S.D. Tex. 2012) (charging violations of books and records and internal controls provisions and aiding and abetting violations of books and records and internal controls provisions); *SEC v. Smith & Nephew plc*, 12-cv-00187 (D.D.C. 2012), (charging violations of books and records and internal controls provisions); *SEC v. Magyar Telekom and Deutsche Telekom*, 11-cv-9646 (S.D.N.Y. 2011) (charging violations of books and records and internal controls provisions) ; *SEC v. Elek Straub et al*., 11-cv-9645 (S.D.N.Y. 2011), (charging with violation books and records and internal controls provisions and aiding and abetting violation of books and records and internal controls provisions); *SEC v. Aon Corporation*, 11-cv-02256 (D.D.C. 2011) (charging violations of books and records and internal controls provisions); *SEC v. Sharef, et al.,* 11-cv-9073 (S.D.N.Y. 2011) (charging aiding and abetting violations of books and records and internal controls provisions); *In re Watts Water Technologies Inc., et al.,* SEC Rel. 34-65555 (Oct. 13, 2011), (charging violations of books and records and internal controls provisions); *In re Diageo plc.,* SEC Rel. 34-64978 (Jul. 7, 2011) (charging violations of books and records and internal controls provisions); *SEC v. Armor Holdings*, 11-cv-01271 (D.D.C. 2011) (charging violations of books and records and internal controls provisions); *SEC v. Tenaris, S.A.,* (May 17, 2011) (SEC's first DPA) (charging violations of books and records and internal controls provisions); *In re Rockwell Automation*, SEC Rel. 34-64380 (May, 3, 2011) (charging violations of books and records and internal controls provisions); *SEC v. Johnson & Johnson*, 11-cv-00686 (D.D.C. 2011) (charging violations of books and records and internal controls provisions); *SEC v. Comverse Technology Inc*., 11-cv-1704 (E.D.N.Y. 2011) (charging violations of books and records and internal controls provisions); *In re Ball Corporation*, SEC Rel. 34-64123 (Mar. 24, 2011) (charging violations of books and records and internal controls provisions); *SEC v. IBM Corp*., 11-cv-00563, (D.D.C. 2011) (charging violations of books and records and internal controls provisions); *SEC v. Tyson Foods, Inc.,* 11-cv-00350 (D.D.C. 2011) (charging violations of books and records and internal controls provisions); *SEC v. Maxwell Technologies Inc.,* 11-cv-00258 (D.D.C. 2011) (charging violations of books and records and internal controls provisions); *SEC v. Jennings*, 11-cv-00144 (D.D.C. 2011) (charging aiding and abetting violations of books and records and internal controls provisions); *SEC v. Alcatel-Lucent, S.A.,* 10-cv-24620 (S.D. Fla. 2010) (charging violations of books and records and internal controls provisions); *SEC v. RAE Systems Inc.,* 10-cv-02093 (D.D.C. 2010) (charging violations of books and records and internal controls provisions); *SEC v. Panalpina, Inc.,* 10-cv-4334 (S.D. Tex. 2010) (charging violations of books and records and internal controls provisions); *SEC v. Pride Int'l, Inc.*, 10-cv-4335 (S.D. Tex. 2010); *SEC v. Tidewater Inc.,* 10-cv-04180 (E.D. La. 2010); *SEC v. Transocean, Inc.,* 10-cv-01891 (D.D.C. 2010); *SEC v. Global SantaFe Corp.,* 10-cv-01890 (D.D.C. 2010); *SEC v. Noble Corp.,* 10-cv-4336 (S.D. Tex. 2010); *In re Royal Dutch Shell plc.,* SEC Rel. 63243 (Nov. 4, 2010).

In the investigations conducted to date, DOJ and SEC have rarely found that companies label bribe payments as facilitating payments. However, in one case, a DOJ and SEC investigation revealed that

bribes had been improperly booked as "facilitating payments." *See* Non-Prosecution Agreement at A-11-A-15, *In Re Noble Corporation* (2010) (admitting facts related to books and records violations for payments improperly booked "facilitating payments"); Complaint, *SEC v. Noble Corp.,* 10-cv-4336 (S.D. Tex. 2010). In another case, a DOJ/SEC investigation revealed that a bribe had been improperly booked as a "facilitation expense." *See* Complaint at 9, *SEC v. Wyeth LLC,* 12-cv-01304 (D.D.C. 2012).

In addition to issuing press releases and posting copies of the relevant documents on DOJ's and SEC's websites, DOJ prosecutors and SEC staff attorneys frequently speak at conferences to discuss and raise awareness of the accounting provisions of the FCPA, including DOJ's and SEC's diligent pursuit of books and records violations and the misreporting of payments. At the roundtables discussed in the response to Recommendation 2(a) above, DOJ and SEC staff discussed facilitating payments in the books and records context, as well as the role of compliance programs in implementing the books and records and internal controls provisions of the FCPA. The Departments of Commerce and State also raise the accounting provisions in the training of U.S. Commercial and Foreign Service officers around the globe, so that they may in turn provide basic information about the statute's obligations to U.S. exporters and investors. In June 2011, SEC, DOJ, and FBI held a three-day "boot camp" training on the FCPA to discuss FCPA enforcement techniques and initiatives, including facilitation payments and the misreporting of such payments. This training was attended by over 200 attorneys, prosecutors, federal agents, internal revenue agents, and accountants of U.S. regulators and criminal authorities. This training was attended by numerous members of foreign regulatory agencies and foreign criminal authorities. In addition, DOJ personnel have provided training to other U.S. government agencies, including agents of the Department of Commerce's Office of Export Enforcement and the Department of State, on the books and records provisions and internal controls provisions of the FCPA and how to identify potential violations of their provisions. The next boot camp will be held in mid-September 2012 and will again be a three-day session focused on FCPA enforcement techniques and initiatives, including training sessions on how to investigate and charge violations of the accounting provisions of the FCPA.

SEC also regularly gives training sessions to foreign regulators regarding how we investigate books and records violations through its International Institutes held in the spring and the fall for regulators around the world, as well as through a number of regional and bilateral international training programs. These sessions cover both books and records violations generally and the FCPA in particular.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7:

7. In order to enhance the effectiveness of the implementation of the 2009 Anti-Bribery Recommendation of Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, the Working Group recommends that the United States clarify the policy on dealing with claims for tax deductions for facilitation payments, and give guidance to help tax auditors identify payments claimed as facilitation payments that are in fact in violation of the FCPA and/or signal that corrupt conduct in violation of the FCPA is also taking place (2009 Anti-Bribery Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions I.i).

Actions taken as of the date of the follow-up report to implement this recommendation:

A tax deduction is prohibited for payments considered to be "an illegal bribe or kickback" or when "the payment is unlawful under the Foreign Corrupt Practices Act." Similarly under 26 U.S.C. § 162(c)(1), a tax deduction is prohibited for a payment if it constitutes "an illegal bribe, illegal kickback, or other illegal payment under any law of the United States . . . ." As facilitation payments are legal under U.S. law, consistent with Commentary footnote 9 of the OECD Convention, they are therefore not barred by 26 U.S.C. § 162(c). In contrast, payments that violate the FCPA clearly may not be deducted, which is made clear in DOJ and SEC's upcoming release, *A Resource Guide to the FCPA*.

IRS Criminal Investigation special agents have assisted in several criminal investigations involving violations of the Foreign Corrupt Practices Act.

DOJ and IRS's Criminal Investigation have met on several occasions over the past year, most recently in August 2012, to identify additional collaboration opportunities. With respect to guidance to help tax auditors identify payments that violate the FCPA, IRS Large Business and International agents are well trained to investigate the substance behind the stated deductions.

In 2010, IRS Criminal Investigation created a separate International Office to more effectively respond to international tax compliance issues. This new International Office has attachés posted in 10 countries and the attachés are specifically tasked with identifying potential leads and assisting with on-going investigations, including those involving potential FCPA violations.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up:

1. The Working Group will follow-up the detection and prosecution of violations of the bribery provisions of the FCPA by non-issuers, which are not subject to the books and records provisions in the FCPA (2009 Anti-Bribery Recommendation II).

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

DOJ has vigorously and successfully prosecuted a myriad of cases since the U.S Phase 3 Review involving non-issuers. DOJ has done so by exercising its authority under 18 U.S.C. §§ 78dd-2 and 78dd-3 and by bringing conspiracy and aiding and abetting charges. *See, e.g.*, Information at 1-2, *United States v. Pfizer H.C.P. Corp.*, 12-cr-169 (D.D.C. 2012) (domestic concern); Non-Prosecution Agreement at 1, *In Re The NORDAM Group, Inc.* (2012) (domestic concern); Information at 1, *United States v. Data Systems & Solutions LLC*, 12-cr-262 (E.D. Va. 2012) (domestic concern); Information at 2, *United States v. Bizjet Int'l Sales and Support, Inc.*, 12-cr-061 (N.D. Okl. 2012) (domestic concern); Non-Prosecution Agreement at 1, *In Re Lufthansa Technik AG* (2012) (identifying liability for non-issuer Lufthansa Technick AG under 15 U.S.C. §§ 78dd-2 and 78dd-3); Information at 1, 8-20, *United States v. Marubeni Corp.*, 12-cr-022 (S.D. Tex. 2012) (charging non-issuer defendant with conspiracy to violate the FCPA under 15 U.S.C. §§ 78dd-1 and 78dd-2 and aiding abetting FCPA violations under 15 U.S.C. § 78dd-2); Information at 1, 6-10, *United States v. Bridgestone Corp.*, 11-cr-651 (S.D. Tex. 2011) (charging non-issuer defendant with conspiracy to violate the FCPA under 15 U.S.C. §§ 78dd-3); Information at 2, *United States v. DePuy (Johnson and Johnson),* 11-cr-099 (D.D.C. 2011) (domestic concern); Information at 2, 7-19, *United States v. JGC Corp.*, 11-cr-260 (S.D. Tex. 2011) (charging non-issuer defendant with conspiracy to violate the FCPA under §§ 78dd-1 and 78dd-2 and aiding and abetting an FCPA violation under 15 U.S.C. § 78dd-2); Information at 3-5, 31-50, *United States v. Alcatel-Lucent France, S.A., et al.*, 10-cr-20906 (S.D. Fla. 2010) (charging three non-issuer defendants with conspiracy to violate the FCPA under §§ 78dd-1, 78dd-3, 78m, and 78ff); Information at 3, *United States v. Salvoch*, 10-cr-20893 (S.D. Fla. 2010) (domestic concern); Information at 3, *United States v. Vasquez*, 10-cr-20894 (S.D. Fla. 2010) (domestic concern); Indictment at 3, *United States v. Granados, et al.*, 10-cr-20881 (S.D. Fla. 2010) (domestic concerns); Information at 2, *United States v. Panalpina, Inc.*, 10-cr-765 (S.D. Tex. 2010) (domestic concern); Information at 2, 19-25, *United States v. Panalpina World Transport (Holding) Ltd*, 10-cr-769 (S.D. Tex. 2010) (charging non-issuer defendant with conspiracy to violate the FCPA and violation of the FCPA under 15 U.S.C. § 78dd-3 and violation of the FCPA under 15 U.S.C. § 78dd-3); Information at 3-4, 8-15, *United States v. Pride Forasol S.A.S.*, 10-cr-771 (S.D. Tex. 2010) (charging non-issuer defendant with conspiracy to violate the FCPA under 15 U.S.C. §§ 78dd-3, 78m, and 78ff, violation of the FCPA under 15 U.S.C. § 78dd-3, and aiding and abetting a books and records violation under 15 U.S.C. §78m); Information at 3-4, 10-15, *United States v. Shell Nigeria Exploration and Production Co. Ltd.*, 10-cr-767 (S.D. Tex. 2010) (charging non-issuer defendant with conspiracy to violate the FCPA under 15 U.S.C. §§ 78dd-3, 78m, and 78ff and aiding and abetting a books and records violation); Information at 3, *United States v. Tidewater Marine Int'l, Inc.*, 10-cr-770 (S.D. Tex. 2010) (domestic concern).

Instructions

11. This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 3 Review.

12. Responses to the questions should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, a separate space has been allocated for describing future situations or policy intentions.

13. Countries are asked to answer all recommendations as completely as possible. Please submit completed answers to the Secretariat on or before **11 September 2012**.