

# Welcome

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We will be starting in a few minutes.**

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# **FCPA Enforcement and Compliance – What In-House Counsel Need to Know in 2021**

*Association of Corporate Counsel*

*Colorado Chapter*

**MARCH 24, 2021**

# Speakers



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*Shareholder*  
*Denver*



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*Vice President, Head of*  
*Compliance & Ethics*

# Agenda

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- Summary of FCPA Basics
- FCPA Enforcement in 2020
- Related Enforcement Trends
- Compliance Suggestions for In-House Counsel
- What to Expect in 2021?



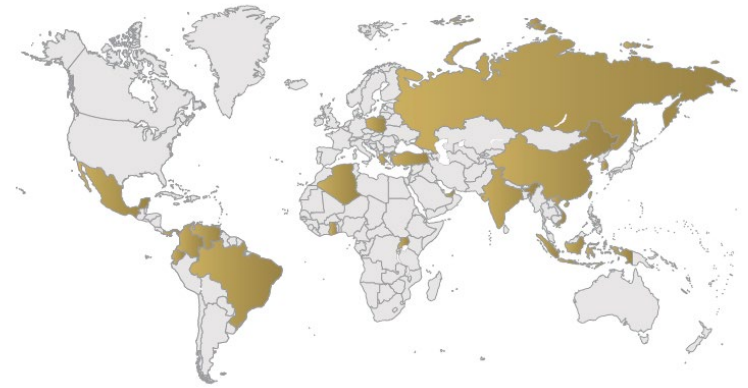
# FCPA Basics

- What does the FCPA require?
  - Anti-Bribery Provision
    - Yes, even any offer of a bribe is prohibited
    - What does “anything of value” mean?
    - Who is a “foreign official” under the FCPA?
    - What does it mean to influence an “act or decision” of an official?
  - Accounting Provisions
    - Keep accurate books and records
    - Maintain internal controls
- To whom does the FCPA apply?

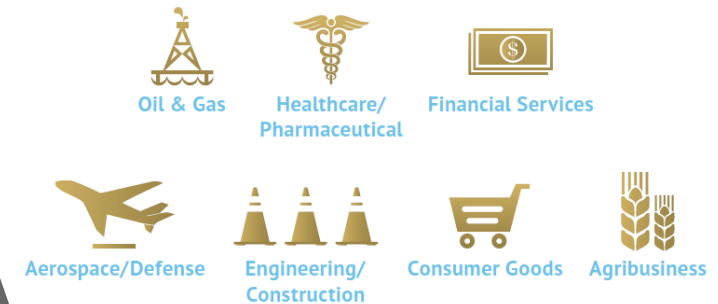


# 2020 Trends in Enforcement

- Corporate enforcement
  - Big penalties
  - Multi-jurisdictional cases
  - Repeat offenders – beware!
  - Other U.S. agency settlements
- Individual enforcement
  - Continued emphasis on holding individuals accountable
  - More FCPA-related offenses (money laundering and wire fraud)
- DOJ and SEC guidance
  - Signal a continued focus on FCPA and the importance of ongoing and risk-based compliance



## INDUSTRIES MOST AFFECTED



**12 Cases**  
**AND**  
**\$2.78B**

in Settlement Amounts  
(Total Global Penalties Related to  
FCPA Cases Almost \$8B)

# Related Enforcement Trends

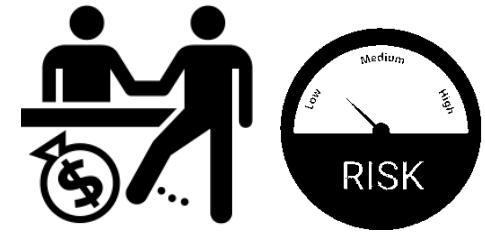


- FCPA is not the only regulatory scheme to consider
  - Sanctions and trade compliance violations also carry significant risks
- Sanctions penalties
  - In 2020, OFAC announced 16 enforcement actions and over \$24 million in penalties
  - In 2019, OFAC announced 26 enforcement actions with over \$1.3 billion in penalties
- Trade compliance
  - In 2019 and 2020, the US penalized firms who violated EAR and ITAR restrictions over \$33 million
- Follow-on disclosure in SEC filings and to lenders



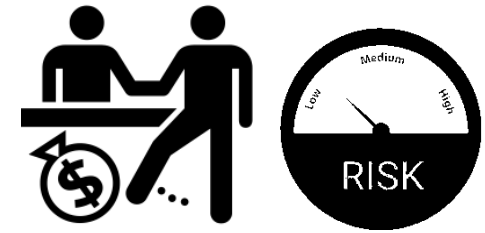


# Compliance Suggestions



- DOJ’s Evaluation of Corporate Compliance Programs guidance
  - Three fundamental questions
    - Is the compliance program well designed?
    - Is the compliance program adequately resourced and empowered to function effectively?
    - Does compliance program work in practice?
  - Key takeaways
    - Risk assessments – can’t just be a “snapshot in time”
    - Compliance should have sufficient resources and autonomy
    - Access to data and data utilization
    - Third parties – diligence isn’t enough, need to evaluate business rationale
    - Lessons learned – update program periodically based on lessons learned

# Compliance Suggestions



- Suggestions for in-house counsel – create effective programs
  - Right size your program (DOJ expects this and it is the only way to create an effective program)
  - Create a continuing dialogue with senior management and the Board
  - Focus on key risks first
  - Deal with issues immediately
- Opportunities that present themselves during the pandemic
  - Update policies to meet new work reality
  - Use Zoom/Teams to create training moments and brown bag, drop-in training
  - Work together with EDI and ESG teams to build a culture of doing the right thing

# What to Expect in 2021?

- Increased enforcement in new administration
  - Number of cases may not initially increase, but individual penalties will likely remain large – OFAC has already announced some large resolutions
- FCPA enforcement is global
  - Foreign countries have seen benefits of cooperating with DOJ and SEC
- Risks from COVID-19 and work from home
  - Focus on potential FCPA violations in connection with vaccines
  - New risks presented by large remote workforce



# Q & A