

Resolving Corporate Investigations with DPAs and NPAs: 2011 Year-End Update

January 27, 2012

NAVIGANT

Agenda

- Introduction
- Presentation
- Questions and Answers — (anonymous)
- Slides — now available on front page of Securities Docket
 - www.securitiesdocket.com
- Wrap-up

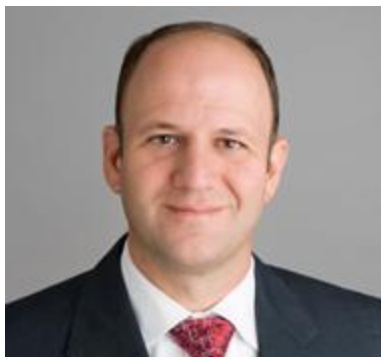
Webcast Series

- Approximately every other week

Panel



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Resolving Corporate Investigations with Deferred and Non-Prosecution Agreements

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January 27, 2012

Securities Docket Webcast



Today's Discussion

I. Background and Trends

II. Key trends in corporate settlement agreements

- a. Breach of DPAs/NPAs and related risks
- b. Use of DPAs and NPAs in collateral litigation
- c. Avoiding suspension and debarment under DPAs and NPAs
- d. Use of DPAs and NPAs by the SEC

III. Response & Remediation: Earning a DPA, NPA, or Declination

DOJ's Intense Focus on Corporate Crime

- **Fraud: False Claims Act & Healthcare**
 - In 2011, \$5.6 billion in criminal and civil fraud-related recoveries—a record and double the amount recovered in 2008.
 - In 2011, individuals filed a record number of whistleblower suits—638.
 - Since January 2009, the healthcare fraud task force has recovered \$6.6 billion under False Claims Act, a historic record.
- **Food, Drug, & Cosmetic Act (“FDCA”)**
 - 21 convictions and \$1.3 billion in criminal payouts in FY 2011.
 - Nine-digit settlements (civil and criminal) are increasingly common.
- **Antitrust:** Nets \$1+ billion in criminal payouts in FY2011, up 78% over FY2010, and filed 50% more criminal cases in FY2011 against 27 corporations and 82 individuals.
- **FCPA:** 2011 saw the second highest number of FCPA actions with 48. Eight of the top 10 FCPA settlements in financial terms were in 2010 or 2011.
- **Asset Forfeiture and Money Laundering:** Revamped unit targets trade sanctions and money laundering issues, resulting in more than \$1.8 billion in penalties through DPAs since 2006.

DOJ's Intense Focus on Corporate Crime

DOJ now uses aggressive tactics, once reserved for cartel cases, in corporate cases.

- In August 2011, Google Inc. entered an NPA with the U.S. Attorney's Office for the District of Rhode Island and forfeited \$500 million—one of the largest forfeitures in U.S. history—following DOJ sting for illegal online pharmaceutical sales.
- To build the case, DOJ used a convicted felon posing as an agent for online pharmacies. The sting included DOJ paying \$200,000 for allegedly illegal ads, recording dozens of phone calls with Google sales executives, and creating web sites, aliases, and a network of fake companies.
 - According to *The Wall Street Journal*, the cooperator signaled to Google sales executives that the drug sales were illegal.
- Using these tactics, DOJ was able to obtain evidence that implicated senior management:

“We simply know...that [Google's CEO] knew what was going on. [T]his was not two or three rogue employees at the customer service level...[but a] corporate decision to engage in this conduct.”

—Peter Neronha, U.S. Attorney for the District of Rhode Island
(WSJ, Jan. 25, 2012)

SEC's Intense Focus on Corporate Crime

- Reorganization yields record number of enforcement actions in 2011, up 8.5% over 2010, resulting in \$2.8 billion in penalties and disgorgement.
 - In 2009-2011, SEC filed nearly 40 actions against more than 80 defendants, including brand-name financial institutions and their senior executives.
 - SEC filed 10 unsettled FCPA cases, signaling more aggressive enforcement stance.
 - Reflecting a similar focus at DOJ, the SEC brought 57 insider trading cases in FY2011, 8% more than the prior year.
 - Relatedly, DOJ inked its first-ever NPA for insider trading on January, 23, 2012.
- The SEC's Whistleblower Office, which opened on August 12, 2011, received 334 tips in just seven weeks (the end of its FY reporting period), including 32 from overseas (China & U.K.).
- But case backlogs are swelling as the closure rate dropped 36% over FY2010.

Biggest DPAs and NPAs of 2010 and 2011

\$7.6b

Fines, penalties, and disgorgement ordered in DPAs and NPAs, and related settlements, in 2010 and 2011.

Five settlements equaled or topped \$500m, and seven others topped \$200m.

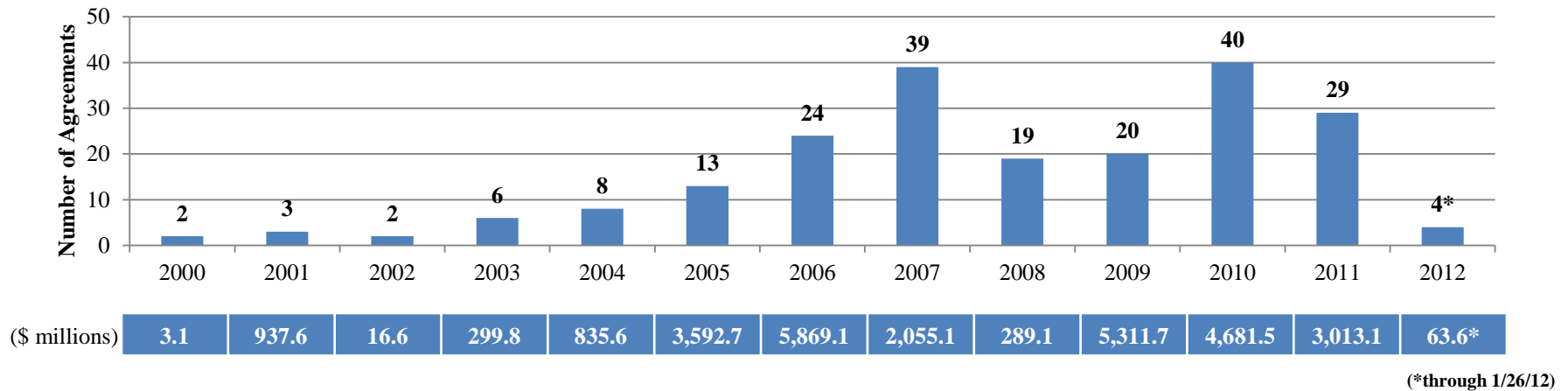
Largest settlements represent a cross-section of agencies and offenses:

- **Merck & Co.**: NPA with USAO for the District of Mass. for drug misbranding: **\$950m**
- **GlaxoSmithKline**: NPA with USAO for the District of Mass. for selling adulterated drugs: **\$750m**
- **Deutsche Bank**: NPA with USAO for the Southern District of New York for promotion of illegal tax shelters: **\$553m**
- **ABN Amro Bank**: DPA with the DOJ's Asset Forfeiture and Money Laundering Section (AFMLS) and the USAO for the District of Columbia for trade sanctions and anti-money laundering violations: **\$500m**
- **Google**: NPA with USAO for District of Rhode Island regarding drug importation charges: **\$500m**
- **Snamprogetti Netherlands B.V.**: DPA with DOJ's Fraud Section for FCPA violations: **\$365m**

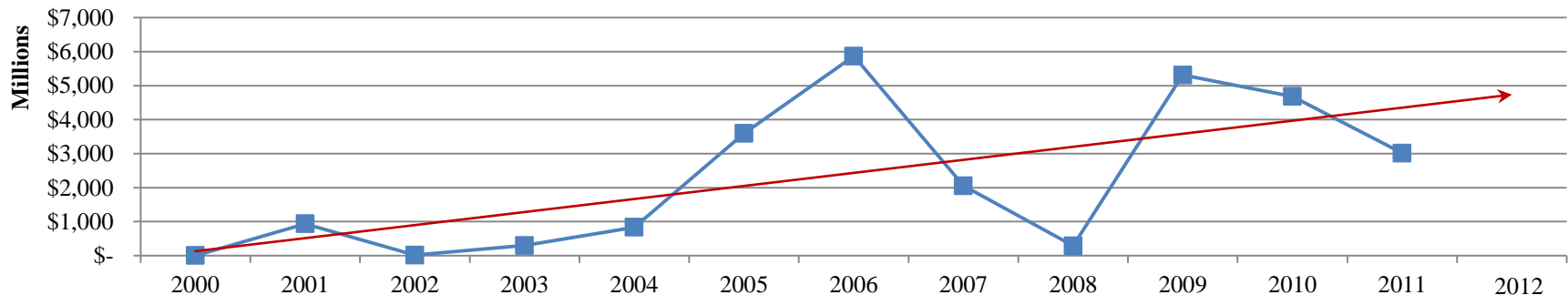
All figures are based on publicly available agreements; NPAs are not necessarily made public.

DPAs & NPAs: Favored Tools of Government Prosecutors that Extract Substantial Monetary Payouts

Total DPAs and NPAs



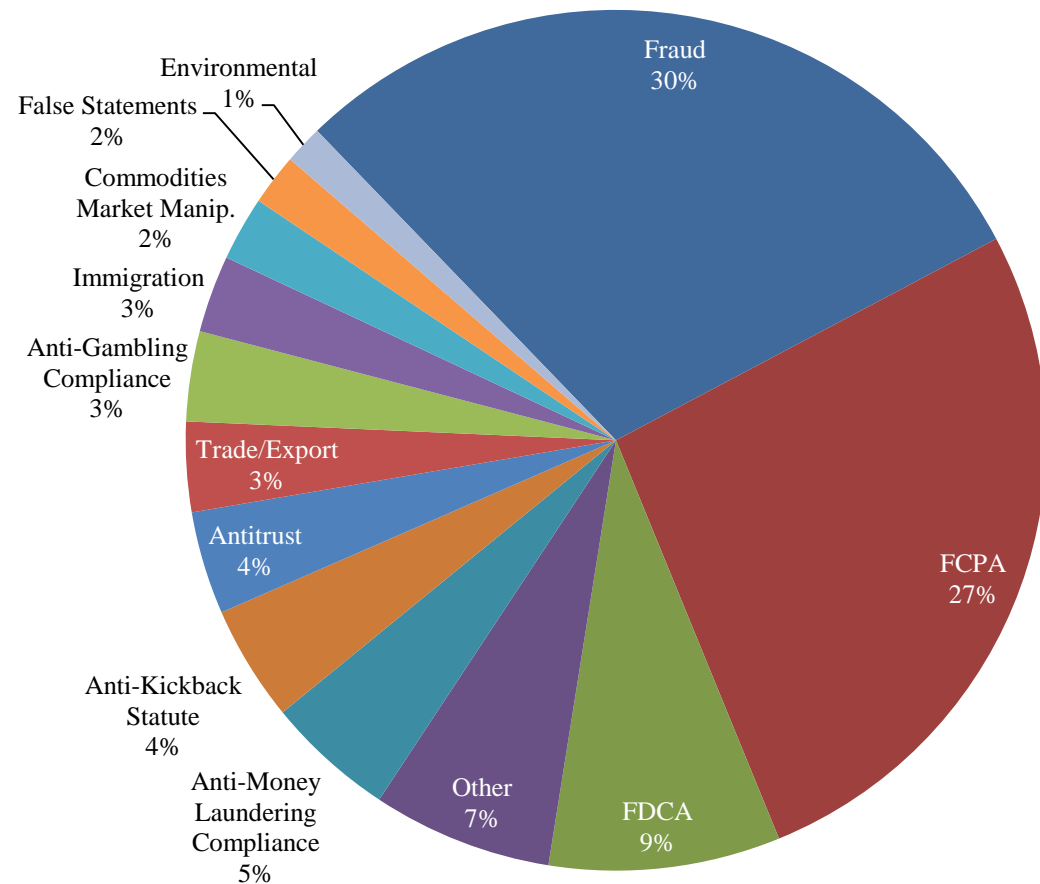
Total Recoveries Related to DPAs/NPAs



Background: What are DPAs and NPAs?

- A middle ground between indictment/guilty plea and declination. Agency agrees to forgo prosecution in exchange for substantial monetary penalties, admission of responsibility, agreement not to commit further violations of law, robust remediation, and cooperation.
- For DOJ, DPAs are filed and approved by federal district courts; NPAs are not.
- DPAs/NPAs have been used to address a wide array of misconduct (see chart).

Total DPAs/NPAs by Primary Allegation (2000-2012)



Background: What are DPAs and NPAs?

- DPAs and NPAs are a favored tool in the government's arsenal against corporate crime.
- Benefits:
 - Mitigates potential collateral consequences of indictment/conviction, including liquidation of company, suspension or debarment from contracting with government entities and/or international development organizations such as the World Bank, loss of jobs and services in the economy.
 - Reduces risks of indictment/conviction to innocent corporate stakeholders (employees, pensioners, shareholders, creditors, customers, etc.).
 - Enables prosecutors to tailor remediation and compliance measures to fit nature of misconduct.
- Risks:
 - Threat of indictment can force a company to agree to a DPA or NPA based on the government's perception of alleged misconduct even under novel, expansive, or unlitigated theories of liability.
 - DPAs or NPAs may contain onerous, costly, and commercially disadvantageous terms that can burden generally law-abiding companies.
 - Long-term compliance, remediation obligations, and material risks in event of a breach require counseled analysis before entering into a corporate settlement agreement.

Background: Common Elements of Criminal DPAs/NPAs

Although tailored to the specific misconduct, DPAs/NPAs commonly include:

- Admission of responsibility, and agreement to admit to facts in court
- Fines and penalties
- Monitoring, self-monitoring, or reporting
- Remedial actions
- Fixed duration, typically 2 to 4 years, sometimes with option year(s)
- Waiver of statutes of limitation
- Obligation to report future violations of law
- No contrary public statements
- Extensive cooperation obligations
- Government's "sole discretion" to declare a company in breach

Background: What DOJ Entities Are Entering DPAs/NPAs?

Between 2000-2012, Main Justice entered into 104 DPAs or NPAs.

The Antitrust Division's recent use of NPAs (4 in 2011) is a major development.

Between 2000-2012, 43 different U.S. Attorney's Offices entered into a DPA or NPA. Certain districts are prolific users; and agreements differ dramatically by Office in key respects.

Main Justice

- DOJ Fraud: 65
- DOJ Asset Forfeiture Money Laundering Section: 10
- DOJ Antitrust: 8
- DOJ Civil: 7
- DOJ Tax: 4

U.S. Attorney's Offices

- Southern District of NY: 27
- District of Massachusetts: 17
- Eastern District of NY: 13
- District of New Jersey: 11
- Eastern District of VA & Northern District of CA: 6 each

Breaches Can Create Major Business Disruptions

- Settlements must be seen as the first step down the road to remediation.
 - Effective remediation is essential.
 - Company management and business leaders must be prepared for aggressive post-settlement remediation efforts.
 - Subsequent violation may put the company in a worse position than if it never entered into the agreement in the first place.
- Agreements often provide DOJ with “sole discretion” to declare when a company is in breach of its DPA/NPA.

Best practices for companies entering into a DPA/NPA:

- Aggressive remediation to comply with the terms of a DPA or NPA
- Candid monitorship assessments or self-monitoring with proposed remediation for any issues found
- Cooperation with agencies and setting clear expectations
- Prompt, voluntary reporting of non-compliant conduct and remediation steps

Collateral consequences from a breach finding are serious:

- Financial consequences
- Business disruption / loss of key personnel
- Reputational harm
- Additional charges and fines
- Civil litigation
- Credit risks or default
- Suspension or debarment

Breaches: Case Study—Wright Medical

Background:

- In September 2010, Wright entered into a DPA with U.S. Attorney for New Jersey to settle allegedly improper incentive payments to physicians.
- In May 2011, U.S. Attorney accused company of **“knowingly and willfully committ[ing] at least two breaches of material provisions of [its] DPA.”**

Fallout from the alleged breach:

- DPA extended for another 12 months, doubling its original term.
- Resignation/termination of CEO, General Counsel, Chief Compliance Officer, Chief Technology Officer, head of European sales, and Director of Clinical and Regulatory Affairs.
- USAO views the new leadership team as only “interim” until the DPA expires.

“Our failure to comply with the Deferred Prosecution Agreement or the Corporate Integrity Agreement could expose us to significant liability . . . which would have a material adverse effect on our financial condition . . . potential prosecution . . . under the previously-filed criminal complaint, civil and criminal fines or penalties, and additional litigation cost and expense . . . [and] default”

–Wright Medical Group Form 8-K,
May 4, 2010

Breaches: Case Study—Wright Medical

Fallout from the alleged breach (con'd):

- In response to the alleged breach, terminations, and for further compliance improvements, Wright Medical spent \$6.8 million in a quarter—nearly doubling the original penalty amount of \$7.9 million—an increase in operating expenses of as much as 2%.

“[I]t was surprising for me coming into the Company under the DPA [with a federal monitor] as to everything that meant. . . . I certainly did understand. I did my research and I understood it to a certain extent, but it really is a process that kind of is omnipresent within the Company and everybody has to be on it, paying attention to it all the time.

—Thoughts of Wright Medical Group, Inc.’s newly-appointed CEO upon taking over his role at a company with a DPA and federal monitor (September 2011)

Breaches: Case Study—Bristol-Myers Squibb Co.

- In 2005, Bristol-Myers entered into a DPA with the U.S. Attorney for New Jersey resolving securities fraud allegations.
 - The terms of the DPA regarding breach stated that a breach could be triggered by **any criminal conduct “related to [Bristol-Myers’] business activities.”**
- In 2006, the U.S. Attorney declared the company in breach for alleged antitrust violations.
- The company subsequently cured the breach, avoiding potential criminal prosecution and possible debarment from participation in federal health care programs by:
 - ousting its CEO and GC at a Board meeting that the U.S. Attorney attended (the executives resigned);
 - implementing additional internal reforms; and
 - pleading guilty to two counts of making false statements to the Federal Trade Commission and paying a \$1 million penalty.

3 of 11

DPAs entered into by U.S. Attorney for New Jersey later found to be in breach and/or extended.

Breaches: Case Study—Aibel Group Ltd.



- In February 2007, Aibel Group entered into a DPA with DOJ’s Fraud Section to resolve FCPA allegations.
- In November 2008, DOJ announced that Aibel Group had breached its DPA and had agreed to plead guilty to a two-count superseding information re-alleging the same conduct underlying the DPA.
- DOJ acknowledged that Aibel had devoted **“substantial time, personnel, and resources to meeting the obligations of its DPA”**, but it still found a breach.
- Aibel agreed to a \$4.2 million fine and a two-year term of organizational probation.

Use of Agreements in Collateral Litigation

- DPAs and NPAs have been used in collateral litigation with mixed results.
 - In the *Stryker* case (slide 18), the mere existence of a settlement with the company helped a private plaintiff survive a motion to dismiss and overcome the pleading requirements of *Twombly* and *Iqbal*.
 - In the *Beazer Homes* case (slide 19), a DPA negotiated in anticipation of its use in pending civil litigation enabled the company to challenge plaintiff's claims without risking breach under the no-contrary-statements requirement.
- Provisions related to the ability of a company to contest liability in civil litigation differ dramatically between U.S. Attorney's Offices, meaning that all DPAs and NPAs are not created equal.
- A company should aggressively negotiate for narrowly tailored factual statements and flexible language to enable it to defend itself in follow-on civil litigation.

Use of Agreements in Collateral Litigation

Mere entry into an NPA can disadvantage a defendant.

Stryker Corp.

- In September 2007, Stryker Orthopedics entered into an NPA with the USAO for the District of New Jersey related to an industry-wide sweep of allegedly improper inducements to doctors to use the companies' artificial joints. Simultaneously, four other competitors entered into DPAs for the same conduct and all five companies received federal monitors. The USAO's press release described allegations common to all five companies, including Stryker, and stated that Stryker avoided prosecution and earned an NPA because it cooperated first.
- The Stryker NPA does not contain a statement of facts, a criminal information, any admissions, or even any allegations of wrongdoing. Nor did it contain any prohibition on Stryker from disputing its liability.
- In May 2008, a civil class action was brought against Stryker by a patient that received a Stryker artificial joint who alleged she had higher out of pocket costs due to Stryker's alleged inducements and sought damages under California's unfair competition law.
 - Plaintiff's first amended complaint was predicated on the allegations made against the industry in the USAO press release, and the complaint attached and incorporated by reference the entire Stryker NPA.
 - In support of its motion to dismiss, Stryker explained that **no criminal charges were ever brought against it and that the NPA contained no factual admissions or finding of guilt**, and that—unlike the four companies that received DPAs and paid a combined \$311 million in penalties—Stryker's NPA carried no financial penalties.
- Nevertheless, the court denied Stryker's motion to dismiss under *Twombly*, in part, because the conduct generally described in the complaint—based largely on the USAO press release, which Stryker did not author or admit to—and Stryker's acceptance of a monitor adequately plead unlawful conduct under California's unfair competition law.
- The parties subsequently settled the case.

Use of Agreements in Collateral Litigation

Negotiated language in agreements can help limit liability in anticipated or pending litigation.

Beazer Homes Inc.

- In July 2009, Beazer Homes (Beazer) entered into a DPA with the USAO for the Western District of North Carolina to settle allegations, including fraudulent mortgage origination practices, and agreed to pay up to \$50 million in civil restitution.
- In a pending class action against Beazer, filed in April 2008, plaintiff alleged that Beazer's mortgages were unfair and deceptive under state law.
 - A magistrate judge denied Beazer's motion to dismiss, finding that the DPA, and the related criminal Information, was a **“significant factor in assessing the ‘plausibility’ of Plaintiff’s [] claim”** under *Twombly* and *Iqbal* (emphasis added).
 - The magistrate judge noted that in its DPA, Beazer 1) “accept[ed] and acknowledge[d] responsibility” for the criminal acts of its employees and managers as described in the related criminal information, and 2) agreed not to contest the facts set for in the Information in the event it was prosecuted by the USAO.
- Wisely, Beazer negotiated specific language in its DPA allowing the company to contest the allegations in the DPA and/or Information. Unlike the majority of DPAs, which do not permit the defendant to dispute the facts contained in the agreement in any context, Beazer's DPA expressly permitted the company to
 - “contest liability, raise defenses, or assert affirmative claims in civil proceedings with specific private civil litigants or classes of litigants relating to the matters set forth in the [] Information, including by disputing [whether] the factual allegations [therein] apply to [the] private civil litigant or class of litigants.”
- The parties subsequently settled the case.

Avoiding Suspension and Debarment under DPAs and NPAs

- Suspension and debarment (and cross-debarment) from government contracts under U.S., E.U., and global development bank rules can represent a corporate death sentence for contractors and pharmaceutical companies with substantial government sales.
 - Under E.U. contracting rules (Directive 2004/18), debarment is mandatory for a company convicted of corruption.
 - Under the U.K. Bribery Act, debarment is discretionary for a company convicted under Section 7 for its failure to prevent bribery—a strict liability violation. All other violations of the Act appear to trigger mandatory debarment under E.U. rules.
 - The U.S. has various suspension and debarment provisions, including under the Federal Acquisition Regulation, the Clean Water or Clean Air Acts, and the Food, Drug, and Cosmetic Act. States and localities also have similar policies.
 - The World Bank’s “base sanction” for misconduct is a three-year debarment with conditional release.
- DOJ sometimes considers the draconian punishment that debarment can represent, and takes steps to avoid that outcome. (E.g., Johnson & Johnson’s January 2011 DPA)
- Because debarment officials could view allegations contained in a DPA or NPA as adequate grounds for debarment, companies should take steps to avoid that outcome.
 - In 2007, U.S. Agency for International Development (USAID) contractor Abt Associates Inc. entered a DPA with the USAO for the District of Massachusetts for False Claims Act violations, admitting to overbilling USAID. In a “Compliance Agreement” between Abt and USAID, an attachment to the DPA, USAID agreed—on behalf of all U.S. Government agencies—not to suspend, debar, or impose any other administrative sanction on Abt related to the DPA.
 - In 2005, KPMG’s DPA with the USAO for the Southern District of New York contained a provision that the DOJ’s own debarment official determined that the auditor was a responsible company. At that time, KPMG was performing work on behalf of DOJ.

SEC's Use of DPAs/NPAs

The SEC began using DPAs and NPAs in 2010 as part of its Cooperation Initiative. To date it has used three NPAs (Carter's Inc., Fannie Mae, and Freddie Mac) and one DPA (Tenaris S.A.).

- SEC's new policy of also requiring admissions if they are made in criminal proceedings and challenges to their long-standing policy of "neither admit nor deny" injunctions may increase the profile of DPAs and NPAs.
- Unknown impact on suspension or debarment questions, or D&O insurance.
- SEC DPAs/NPAs are untested as to their use in collateral proceedings as evidence compared with SEC's prior use of civil settlements, which were generally not considered evidence.

DOJ and SEC standards clearly differ:

- Tenaris settles with DOJ and the SEC for same conduct in violation of the FCPA. SEC obtains a DPA while DOJ settles with NPA.



SEC treats NPAs as cooperation agreements:

- The SEC Enforcement Manual: SEC only uses NPAs under "**limited and appropriate circumstances**".
- All three NPAs to date seek extensive cooperation from the company and were coupled with charges against the allegedly culpable employees.

"Tenaris's conduct was clearly in violation of the FCPA. But when Tenaris discovered the illegal conduct, it took noteworthy steps to address the violations and significantly enhance its anti-corruption policies and practices."

—SEC Enforcement Division FCPA Unit Chief

SEC's Use of DPAs/NPAs: A Comparison with DOJ

	DPA	NPA
	<ul style="list-style-type: none"> • Not filed with court; public upon request • No complaint • Includes statement of facts • Term-limited • Tolls statutes of limitation (SOLs) • Financial penalties • Deniable in collateral litigation 	<ul style="list-style-type: none"> • Not filed with court, availability unspecified • No complaint • May include statement of facts • Indefinite term, until related litigation concludes • Tolls SOLs, at least until the related litigation concludes • No financial penalties • Deniable in collateral litigation
	<ul style="list-style-type: none"> • Filed with court as public record • Accompanies criminal information • Includes statement of facts • Term-limited • Tolls SOLs • Financial penalties • Rarely deniable in collateral litigation 	<ul style="list-style-type: none"> • Not filed with court, but often public • No charging documents • Includes statement of facts • Usually term-limited • Tolls SOLs • Financial penalties common • Rarely deniable in collateral litigation

Response & Remediation:

Earning a DPA, NPA, or Declination

- A company learns of potential misconduct through one of several channels (e.g., a whistleblower, internal report, subpoena, *The New York Times*).
 - Companies must have in place procedures to identify major issues and properly escalate them to senior management immediately: minutes count in the early days.
- Regardless of whether government prosecutors are involved yet, the responsible company (1) evaluates the facts and, (2) if justified, launches a well-scoped, thorough investigation and tailored remediation plan to address near-term and long-term issues.
- Take appropriate steps to preserve all available privileges over investigation.
- Investigation and remediation creates options for the company down the road and helps achieve the best outcome possible under the circumstances should the government learn of the conduct or the company decide to voluntarily disclose.
- Identifying systemic issues and devising and implementing policies and systems to prevent future violations are crucial, including periodic program reviews and updates to the company's risk assessment methodology.
- Fully document every investigatory step and remedial measure to obtain credit for the company's efforts from the prosecutors.

Response & Remediation: Investigation Considerations

Some questions government prosecutors are likely to ask include:

- What did you do when you found out about the issue? E.g.:
 - What immediate safeguards did you put in place to stop the misconduct?
 - Did you counsel, train, discipline, or terminate the culpable employees?
- What resources did you commit to the investigation?
- Does the issue exist for the same business line in other countries, and/or extend to other business lines in the same country?
- What other issues exist in that country or business line?
- To what extent was management aware of the issue?
- How did your current compliance program miss the issue(s)?
- What programmatic improvements are you making to your compliance program today to prevent future wrongdoing?

Response & Remediation in Highly Regulated Entities

A Focus on Money Laundering Violations

5% of all DPAs/NPAs are related to anti-money laundering (AML) or Bank Secrecy Act (BSA) violations. The highly regulated nature of banks complicates investigations and makes an effective compliance program paramount.

- Violations more likely to be uncovered because of regular examinations by regulators.
- Proving willful failure to maintain an adequate AML/BSA program is easier as enforcement action usually follows multiple deficient examinations.
- Collateral risks include reputational damage, limitations on business, and future growth.
- Violations may have national security implications.

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Monday, March 29, 2010

Pamrapo Savings Bank of New Jersey Pleads Guilty to Conspiracy to Commit Bank Secrecy Act Violations and Forfeits \$5 Million

“Pamrapo Savings Bank admitted [in its guilty plea] that it willfully violated the BSA to avoid the expenses associated with compliance, despite federal and state banking regulators telling Pamrapo Savings Bank as early as 2004 that its BSA and AML programs contained serious and systemic deficiencies in critical areas required under the law.”

“This case is a good example of how disregarding reporting and compliance can turn into a crime.”
—Assistant Attorney General, Criminal Division,
Lanny A. Breuer

Response & Remediation in Highly Regulated Entities

A Focus on Money Laundering Violations

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, April 27, 2011

North Carolina Bank Agrees to Pay \$400,000 in Restitution to Victims of Investment Fraud Scheme It Failed to Detect and Report

“The Bank failed to recognize and mitigate risks and report [suspicious activity]. The Bank’s failure to respond to such risk with commensurate systems and controls was both systemic and longstanding,” dating back to at least 2001.

—FinCEN Director James H. Freis, Jr.

“CommunityONE Bank turned a blind eye to criminal conduct occurring under its nose. By agreeing to... overhaul its anti-money laundering program, the bank has begun the process of righting its wrongs.”

—Assistant Attorney General, Criminal Division,
Lanny A. Breuer

- Compliance program will have to be “the gold standard.”
- Remediation efforts can be specific and expensive:
 - Structure of compliance function and staffing changes
 - Remediation of risk assessment, customer due diligence, and transaction “lookbacks”
 - Substance of policies and procedures
 - Aggressive timelines
- *Start early.* The further along you are in remediation efforts, the more control you will have over substance and timing.

Remediation: Risk Assessment/Self-Evaluations

Questions to ask during a company's risk assessment of its compliance program:

- Does it meet the standards set forth in U.S. Sentencing Guidelines?
- Is it up to date with the latest regulatory trends and changes in the law?
- Does it reflect the issues identified in enforcement actions in similar industries/countries?
- Have its stakeholders identified areas of concern or gaps in the program, or company policies/procedures?
- Does it benchmark positively against programs of peer companies?

Objectives of Risk Assessment and Self-Evaluations:

- Convince regulators that NPA or DPA is appropriate
- Reduce duration of monitorship, or obtain self-monitor

Conducting a Risk Assessment:

1. Identify and triage issues
2. Gather a team (audit/finance, business, compliance, and legal)
3. Create and execute a plan
4. Remediate issues and document
5. Refresh periodically

Remediation: Rise of Self-Monitoring/Reporting Reinforces Internal Risk Assessment Process

Self-Monitoring Processes:

- Companies give an initial report.
- Thereafter, annual or biannual reviews for the duration of the agreement.
- Process must be independent and honest—self-monitoring is not a get-out-of-jail free card.
- Reports are submissions to the government—lack of candor may carry false statement liability.

- Outside of the FCPA context, independent monitorships are in every settlement agreement with the USAO for the District of New Jersey and embedded in Corporate Integrity Agreements following most FDCA violations.
- In 2010, 42% of FCPA settlements included independent monitor provisions.
- In 2011, only 1 of 11 (9%) FCPA settlements required an independent monitor (JGC Corp.). It was the largest FCPA settlement in 2011 and the 6th largest of all time. Every other DOJ FCPA settlement in 2011 included a self-monitoring/reporting requirement.

“J&J agrees that it will report to the [DOJ] periodically . . . regarding remediation and implementation of the compliance measures . . . J&J shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least five follow-up reviews and reports.”

–Johnson & Johnson DPA (2011)

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Questions?

Thank You
For Attending This Webcast

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