



CFTC Enforcement: CEA and Foreign Corrupt Practices

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Why is it important to know about CFTC enforcement relating to foreign corrupt practices?

- The jurisdiction of the Commodity Futures Trading Commission (the “CFTC”) under the Commodity Exchange Act (the “CEA”) is broader in some respects than other enforcement agencies’ jurisdiction under the Foreign Corrupt Practices Act (the “FCPA”).
 - Private firms and their employees engaged in activity outside the U.S. involving trading in U.S.-listed contracts or commodities in interstate commerce fall under the CFTC’s jurisdiction.
 - The CFTC can pursue civil enforcement actions that the Department of Justice (“DOJ”) might decline to charge criminally due to lack of evidence of criminal intent but which the Securities and Exchange Commission (“SEC”) is unable to pursue because no SEC-registered issuer is involved.
- Changes to the inter-agency dynamics for foreign corruption cases, including potentially expanding the upside for whistleblowers, as well as the complexities of investigations with another aggressive regulator getting involved.



Outline of Today's Presentation

- Overview of the FCPA and Enforcement of Foreign Corrupt Practices
- CFTC Initiative to Investigate Violations of CEA Involving Foreign Corrupt Practices
- CFTC Foreign Corrupt Practices Investigations Enforcement Tools
- First CFTC Matter Involving Foreign Corruption: *In the Matter of Vitol Inc.*
- Steps Companies Should Consider in Wake of CFTC Enforcement of Foreign Corruption



Overview of the FCPA



FCPA Background



Enacted in 1977 following investigations that revealed hundreds of U.S. companies making payments to foreign officials of more than \$300 million.

Designed to combat bribery by companies and issuers by:

- criminalizing payment to government officials; and
- instituting recordkeeping regulations that make bribes more difficult to hide.

Enforcement authority is shared by the DOJ and SEC. DOJ has criminal enforcement; SEC has civil enforcement authority over issuers.

Consequences of FCPA violations can include substantial fines, criminal penalties, debarment from bidding on some government contracts or projects, costly investigations, and reputational damage.


The FCPA remains, by far, the most vigorously-enforced foreign bribery law.



Corruption is Costly

Top FCPA Enforcement Actions

No.	Company	Total Sanction	Year
1	Goldman Sachs	\$3.3 billion	2020
2		\$2.09 billion	2020
3		\$1.78 billion	2018
4		\$1.06 billion	2019
5		\$1.01 billion	2017
6		\$850 million	2019
7		\$800 million	2008
8		\$795 million	2016
9		\$772 million	2014
10		\$585 million	2018



FIA

The logo consists of the letters 'FIA' in a bold, sans-serif font. The 'F' is dark grey. The 'I' is dark grey. The 'A' is composed of two overlapping shapes: a light green triangle pointing upwards and a light blue triangle pointing downwards. The background features large, overlapping geometric shapes in light green, light blue, and light yellow.