

# The Brief

## A Legal Quick Hit Overview

January 2020

### FCPA Enforcement – 2019 Recap and What to Expect in 2020

2019 was a busy and productive year in FCPA Enforcement. The DOJ and SEC opened a large number of enforcement actions and collected record fines and penalties. There were refinements to the FCPA Corporate Enforcement Policy and other important developments. During our January Legal Quick Hit speakers Claire Rauscher and Anne Takher shared an FCPA Review of 2019 and predictions for 2020. Unable to join this January Legal Quick Hit? Check out the highlights below.

#### Declinations

- 2017—DOJ allows declinations for voluntary disclosure of FCPA-related misconduct
- Exception: Aggravating conduct by senior management
- However, two 2019 corporate declinations involved senior management misconduct.

#### SEC Theories of FCPA Liability

- Uses aggressive accounting provisions
- Focuses on lack of internal controls in preventing gifts (even if there is no evidence of corruption) a key concern
- Uses FCPA accounting provisions to punish anti-money laundering deficiencies

#### New DOJ Guidance

- **Corporate Enforcement**
  - Emphasizes appropriate guidance & controls on social media messaging
  - DOJ states it “will not take steps to affirmatively direct a company’s internal investigation efforts”
  - Presumption of declination if company self-reports during due diligence investigation in M & A deals
  - Involvement of senior management “will not necessarily preclude a declination”

### Speakers



**Claire Rauscher**  
Partner, Charlotte, NC

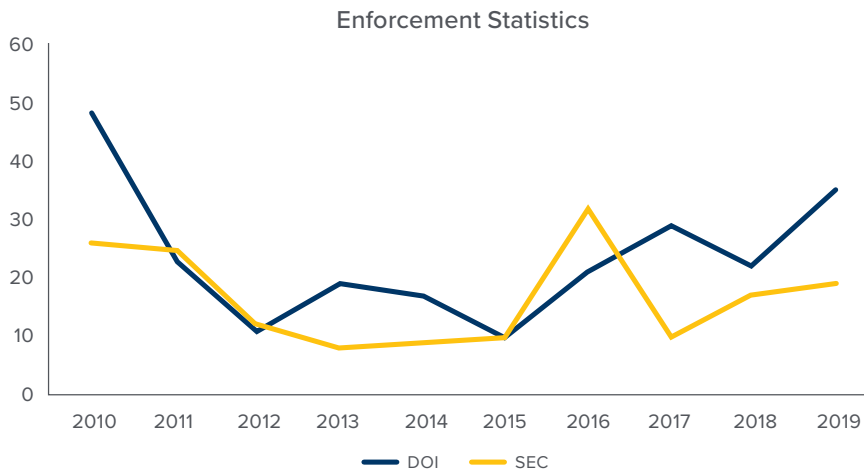
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Claire Rauscher is a veteran white collar criminal defense attorney whose practice includes counseling clients in FCPA compliance matters.



**Anne Takher**  
Senior Director, Compliance and  
Ethics  
ON Semiconductor



Total 2019 corporate financial penalties topped \$2.5 billion (a new record).

- **Evaluating Corporate Compliance Programs**

- April 2019—DOJ updates prosecutors on how to assess effectiveness of compliance programs
- 3 Part Inquiry:
  - 1. Is the compliance program well designed? 2. Is the program being implemented effectively & in good faith? 3. Does the compliance program work in practice?"

- **Inability to Pay Guidance**

- October 2019—DOJ releases new guidance.
- Before DOJ will discuss inability to pay claim, the parties must agree on the form of the criminal resolution, amount of monetary penalty
- Future financial metrics disclosure required
- Prosecutor **may** reduce penalty if company cannot pay

### **Commodity Futures Trading Commission joins FCPA Enforcement**

- CFTC published 2019 self-reporting/cooperation for foreign bribery advisory
- Several CFTC inquiries are in motion
- Focused on Commodity Exchange Act (CEA) violations

### **What to expect in 2020**

- Corporate Enforcement will continue to be strong
- Continued Enforcement and Prosecution of Individuals
- Collaboration with Foreign governments
- Victim's rights (payments to foreign governments)

"The Brief" provides Compliance and Ethics Network members with a brief overview of highlights and key points covered in the monthly Legal Quick Hit. The full recording of this presentation can be found on the ACC website [www.acc.com](http://www.acc.com).

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