The Other Moneyball

Professional Sports Leagues and the Foreign Corrupt Practices Act

BY DAVID PEET AND DAVID MINDELL

Imagine a federal statute that subjects Major League Baseball (MLB) officials and member teams to hefty fines and imprisonment for their roles in attempting to sign the next Pedro Martínez, National Basketball Association (NBA) officials and member teams for trying to discover their Yao Ming in China, or National Football League (NFL) officials for staging their equivalent of the World Baseball Classic in markets around the globe. Sound far-fetched? It shouldn't. As sports regulations by foreign governments become more commonplace and the United States increases regulation of foreign corruption, these scenarios are becoming more of a reality. What is more, the chain of events that could lead to such outcomes originates not in a team's own backyard, but rather in the remote locations around the globe where scouts discover and cultivate the next great superstar, and teams and leagues try to expand their business, brands, and influence. The more professional sports leagues and teams operate outside the United States, the more they risk running afoul of regulators in the United States and an increasingly familiar weapon in their arsenal: the Foreign Corrupt Practices Act (FCPA).[1]

This article begins by providing an overview of the FCPA, focusing specifically on its broad jurisdictional reach, unique enforcement provisions, and potential for civil and criminal penalties. Next, the article argues that FCPA regulation of the sports industry would be consistent with the broad historical regulation of the professional sports industry in the United States and recent enforcement practices at the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC). In order to illustrate application of the statute, the article conducts an in-depth examination of the challenges that MLB faces in Latin America, where the Dominican Republic and Venezuela governments have started to combat the corruption of independent scouts, or *buscones*, by increasing oversight of baseball's lucrative talent acquisition and development industry. The article concludes by reinforcing that the FCPA risks are not unique to the baseball industry, but rather are prevalent in a wide range of contexts for different professional sports leagues. Finally, the article reminds professional sports leagues of the importance of taking measures to proactively address these risks.

FOREIGN CORRUPT PRACTICES ACT

Leagues, Member Franchises, and Other Covered Parties

Jurisdictionally, the FCPA casts a wide net capable of capturing

seemingly remote individuals and entities. However, at its core, the FCPA essentially has only two primary areas of enforcement: (1) antibribery, and (2) accounting.

The accounting provisions require, among other things, certain entities to maintain accurate books and records and adequate internal accounting systems and controls. However, the accounting provisions generally only apply to U.S. and foreign *public* companies listed on stock exchanges in the United States or otherwise required to file periodic reports with the SEC ("issuers"). In the sports world, although some potential liability is conceivable for a public company with a subsidiary that operates a professional sports team, the accounting provisions are less likely to be an area of concern because most professional sports entities are not public and would not fall under the definition of "issuer."

By contrast, the antibribery provisions are much more far-reaching. In addition to issuers, the antibribery provisions cover U.S. persons and businesses ("domestic concerns") and foreign persons and businesses operating within U.S. territory (collectively with issuers and domestic concerns, "covered parties"). This includes not only the entities themselves, but also their officers, directors, employees, joint venture partners, and shareholders.

Liability for Actions of Third-Party Scouts

The FCPA's antibribery provisions also apply when covered parties rely on third parties to conduct operations abroad. Indeed, franchises belonging to professional sports leagues could, for example, be liable based on scouting activities conducted on their behalf by third parties abroad. FCPA liability attaches if the covered party gives anything of value to any other person while knowing that this third party will make an improper payment to a foreign official, and the standard for knowledge is surprisingly low. The covered party can face liability for having mere awareness that the unlawful conduct has a high probability of occurring. The absence of an actual knowledge requirement ensures that a covered party cannot escape FCPA liability by being willfully blind to facts and circumstances that would tend to indicate unlawful conduct.

Where leagues or member teams rely on the use of third parties as part of a system to locate and evaluate talent or promote their business interests, such a relationship may be sufficient to establish an agency relationship for FCPA liability purposes even in the absence of a formal employment agreement. That is, the manifest assent necessary to establish an agency relationship may exist if a league or member franchise (1) achieves a benefit from the work of the foreign-based third party, and (2) operates with the knowledge that these third parties represent to others that they are either affiliated or maintain relationships with league or team officials.

Prohibited Activities under the FCPA

The statute's antibribery provisions prohibit covered parties and their agents from making corrupt payments of anything of value to foreign officials for the purpose of obtaining or retaining business. The statutory definitions of the various key terms are interpreted broadly. For example, what constitutes "anything of value" includes not only cash payments, but also travel expense reimbursement, gifts, and professional or consulting opportunities. Of special note for professional leagues and teams, something of value can also include tickets given to government officials. The FCPA does not have a minimum value threshold for a corrupt gift or payment, though the statute does exempt from criminal liability facilitating payments that are intended to expedite "routine governmental action" by a foreign official.

The "business purpose" of a corrupt payment has been interpreted with similar breadth. In 2004, the Fifth Circuit stated that, with respect to the FCPA, "Congress meant to prohibit a range of payments wider than only those that directly influence the acquisition or retention of government contracts or similar commercial or industrial arrangements."[2] The court held that bribes paid to obtain favorable tax treatment fit within the FCPA's definition of prohibited payments.

From the perspective of a professional sports league or its member team, payments made to achieve the falsification of papers for an athlete, including age records or drug testing records, would almost certainly fit within the broad definition of business purpose. While so-called regular "facilitation payments" are permitted under the FCPA to expedite otherwise normal duties of government officials, bribes for the falsification of papers are not permitted under the exception. Bribes paid in furtherance of the acquisition of talent enable teams to acquire assets in the form of athletes. These assets help the league and its teams to sell merchandise, increase paid attendance at live events, and generate revenue through other activities. Like the alleged bribes paid by Panalpina, a global freight forwarding company that government regulators alleged obtained falsified documentation related to permits to import a client's drilling equipment,[3] the acquisition of an athlete falls within the business purpose of a league or one of its member teams.

In a matter more relevant to the sports industry, the SEC and DOJ filed actions against Sam P. Wallace Co. in 1982 and 1983, respectively, for the company's payment of bribes to the chairman of the Trinidad and Tobago Racing Authority in exchange for the ability to obtain and retain a contract to construct a racetrack in Trinidad.[4] Because the racing authority was an agency of the government of the Republic of Trinidad and Tobago, the DOJ alleged that the payments to one of its employees were well within the scope of the FCPA's antibribery provisions.[5]

What Are the Penalties?

Leagues and teams that violate the FCPA are subject to both criminal and civil penalties. Criminal penalties—which generally require a showing of willful violation—for the antibribery provisions include: (1) for business entities, a fine of up to $2 million; and (2) for individuals, fines of up to $100,000 as well as imprisonment for up to five years.[6] With respect to the knowledge requirement, the Second and Fifth Circuits have concluded that the government need only show that the individual knew generally that the conduct in question was unlawful.[7] Thus, a league or team official who knows about the impropriety of the bribe in question may find himself at risk of imprisonment even if he is completely unaware of the FCPA.

By contrast, willfulness is not required to prove corporate criminal or civil liability. Civil penalties can include a fine of up to $10,000 and disgorgement of profits.[8] The

costs of noncompliance with the FCPA, however, can escalate quickly. The German electronics conglomerate Siemens A.G. settled FCPA claims in 2008 for $800 million, which did not include roughly another $1 billion to conduct a thorough internal investigation of the accusations.[9] In 2009, federal regulators settled with Kellogg Brown & Root (KBR), a Texas-based engineering firm, and its parent company, Halliburton, for a combined $579 million.[10] While these settlements may be at the extreme end of the spectrum, the costs of smaller FCPA penalties can still have both a financial and reputational impact.

Professional Sports in the Crossfire?

Although all covered parties are subject to FCPA regulations, the SEC and DOJ have shown in recent years an interest toward targeting particular industries. For example, in November 2009, DOJ Criminal Division Chief Lanny A. Breuer described in a speech to the Pharmaceutical Regulatory and Compliance Congress's annual forum that the DOJ was focused on FCPA enforcement in the pharmaceutical and medical device industries.[11] More recently, the companies in the freight forwarding and energy industries have been the targets of FCPA investigations.

Could the sports world be next on the SEC or DOJ's FCPA hit list? In recent years, the federal government has shown it has little desire to sit on the sidelines as the sports world tackles newsworthy issues. Any illusions that the government saw the professional sports world as simply regulators of games to be left to their own devices rather than another huge revenue generating industry similar to their pharmaceutical or energy counterparts was shattered when MLB watched some of its biggest stars testify to Congress on the issue of steroid use. The related Bay Area Laboratory Co-Operative (BALCO) investigation resulted in Barry Bonds being charged with obstruction of justice and perjury for allegedly lying to a grand jury. More recently, the DOJ has considered a civil fraud claim under the False Claims Act against Lance Armstrong. Regardless, the era of white glove treatment for the sports world appears to be over.

A CASE STUDY: MLB'S FCPA CHALLENGES IN LATIN AMERICA

Buscones *in Latin America*

As the foregoing overview of the FCPA makes clear, professional sports leagues and their member franchises will be liable for willfully and corruptly providing any item of value to foreign government officials for the purpose of promoting league business. In the case of talent acquisition, a league or member franchise cannot hope to distance itself from the corrupt payment of a third-party scout, as that scout's conduct may be imputed to the team or the league under a theory of agency liability. For this reason, professional sports leagues that rely heavily on the influx of new athletes from international markets that have state-regulated sports industries and a deeply entrenched history of corruption are particularly high-risk. More generally, leagues looking to expand their operations and business abroad must be aware of FCPA risks to the same degree as other global businesses.

MLB serves as an example of such a league. Its member teams work, open offices, and acquire talent in Latin American markets like the Dominican Republic and Venezuela. The Dominican Republic and Venezuela ranked 118th and 165th out of 176 countries on Transparency International's 2012 Corruption Perceptions Index with scores of 32 and 19 (on a 100-point scale).[12]

Corruption pervades many industries in these countries, including the baseball industry. In these countries, independent baseball scouts, or *buscones*, have long operated in a world free of regulation from either the commercial enterprises that eventually compensate them for the talent they promote—the MLB member franchises—or from the governments of the very nations where such talent is sought. Out of this environment has sprouted a $100 million talent development industry, as well as frequent complaints of fraud and exploitation. Among other things, *buscones* have been accused of various forms of impropriety, including bribery of government officials to falsify papers in executing age and identity falsification schemes.

Calls for Reform and Responses

Following discoveries in 2008 that scouts from the Washington Nationals and Chicago White Sox participated in schemes to deliver kickbacks to *buscones*, the league prohibited clubs from paying signing bonuses to anyone other than a player or his family. Beginning in the 2012–2013 signing season, the league created a tiered bonus system that restricts the amount teams can pay to sign international amateur players. In addition, the league has often debated the idea of instituting an international player draft in order to eliminate the possibility that a player's exorbitant signing bonus ends up in the pocket of a *buscón*.

More importantly, however, calls for reform have started to take hold in the *buscones*' own countries. The governments of the Dominican Republic and Venezuela have either proposed or enacted laws aimed at preventing the exploitation of current and future athletes. Regulation in the Dominican Republic started as early as 1985, when Presidential Regulation 3450 called for scouts to obtain an identification card from the Secretary of State for Sports, Physical Education and Recreation. The decree also limited the time periods in which players may be signed. Notably, the regulation defines "scouts" as those individuals that are "accredited by an organization of the major leagues," thereby allowing freelancing *buscones* to evade detection. In addition, violations of the regulations refer only to the loss of a registration card, and do not include any other penalties to dissuade corrupt activity. More than 20 years later, the Dominican Republic's legislature enacted the General Law of Sports, which includes a section capping the amount that *buscones* are eligible to claim from a player's signing bonus. While these regulations restrict the conduct of independent scouts, they have actually operated as "law in theory but a suggestion in reality."[13]

In Venezuela, the president of the Venezuelan Baseball Federation (VBF) petitioned the country's National Assembly in April 2011 to require that only those scouts authorized by MLB have the ability to negotiate player contracts with the families of Venezuelan prospects. Beginning in 2012, the VBF also imposed a mandatory player registration system that is aimed at minimizing age and identity fraud. The registration system requires all players who attained age 16 between September 2011 and August 2012 to present their birth certificates or

Venezuelan identity cards to VBF officials. Registration may also be completed through scouts recognized by MLB.

The potential enforcement of these regulations in Latin America should give MLB and its member clubs pause. Enhanced regulation of professional baseball on the part of foreign governments increases the opportunities for employees and agents of MLB and its member clubs to interact with government officials. Additional contact with government officials allows for more opportunities to provide an employee of the government with a benefit in exchange for any number of business advantages. Thus, while new regulations aim to protect against abuse of the local baseball industry in Latin American countries, these same efforts increase the risk of MLB and its member clubs running afoul of the FCPA.

The FCPA in Practice: A Hypothetical Buscón-*Team Interaction*

Team A, a Delaware limited liability company, is a professional baseball franchise owned by CableCorp, an American cable television company that trades on the New York Stock Exchange. Team A is not listed on a national U.S. stock exchange, and is a member of MLB, an unincorporated business made up of its member clubs. Team A operates in the United States and also owns land in Venezuela, where it operates a baseball academy for young prospects. Venezuela is known to have a high risk of corruption, particularly with respect to the professional baseball industry.

Buscón invites scouts from Team A to attend a workout in Venezuela for Player, a 16-year-old prospect from Venezuela. The scouts from Team A have attended workouts at *Buscón*'s academy previously, and have provided him with small finder's fees (approximately $100–$200) in exchange for showcasing prospects. Team A's scouts have heard rumors from family members of previously signed prospects that *Buscón* lost his license for failing to comply with local scouting regulations, and that he skims large percentages of player signing bonuses. The scouts consider *Buscón*'s conduct to be commonplace in the scouting environment of the country and accept the invitation to attend the workout.

At the workout, Player displays impressive athletic ability for his age. Team A has been interested in Player for quite some time, but has heard rumors from scouts of other teams that he may not be the age that *Buscón* claims. When the scouts express their reservations about his age, *Buscón* explains, "That's what his ID says, so it must be true, right?" Despite their reservations, the scouts like Player's ability and offer to negotiate with *Buscón*. *Buscón* asks for $150,000—$100,000 for the player and $50,000 for *Buscón*. Team A's scouts balk at the offer. Team A's scouts offer $100,000 and include a $200 finder's fee. *Buscón* agrees to Team A's terms.

Without the actual knowledge of Team A, *Buscón* has had two recent interactions regarding Player:

- First, *Buscón* has offered a portion of his next finder's fee to an employee of the VBF, an organization under the control of the country's Ministry of Sport. The VBF was created by federal enactment and is the only baseball federation in Venezuela. It receives approximately 80 percent of its funding from Venezuela's Ministry of Sport and has its own set of disciplinary procedures, which are subject to the approval of the Ministry of Sport. In exchange for the portion of *Buscón*'s finder's fee, the VBF employee supplies an identity card stating that *Buscón* is an "accredited" scout and is affiliated with a major league organization. Using this card, he negotiated with Player's family to obtain a 50% share of Player's bonus money.
- Second, *Buscón* has promised a percentage of Player's bonus to a VBF employee responsible for overseeing player registration. In exchange for this portion of Player's bonus, the VBF employee has agreed to falsify Player's age in the player registration books.

So, which entities fall within the FCPA's jurisdiction? Even though Team A and MLB are private companies that are not traded on a national stock exchange and have no reporting responsibilities to the SEC, both entities could be classified as domestic concerns due to their operation in the United States. Moreover, CableCorp is an issuer because it is publicly traded on the New York Stock Exchange. Thus, as a subsidiary of a publicly traded company, Team A could also be considered an issuer for FCPA purposes.

Because Team A and MLB fall within the FCPA's jurisdiction, the FCPA analysis requires a determination of whether *Buscón*'s payments fall within the "business purpose test." In *United States v. Kay*, the Fifth Circuit explained that the inquiry centers on whether *Buscón*'s payments were made "to engender assistance in improving the business opportunities of the payor or his beneficiary, irrespective of whether that assistance be direct or indirect, and irrespective of whether it be related to administering the law, awarding, extending, or renewing a contract, or executing or preserving an agreement."[14] Here, the payments fall within the scope of the FCPA because they indirectly enable Team A to improve its business opportunities, namely signing Player to a contract.

The promises to pay as part of each interaction with VBF employees also constitute offers of items of value within the meaning of the FCPA. As U.S. regulators have recognized, large amounts of cash are the most obvious form of corrupt payment. Whether this cash reaches baseball federation officials in the form of a finder's fee or a player bonus, the value of the item provided cannot be debated.

It is also clear that employees of entities that regulate sports in a foreign country are foreign officials under the FCPA. In the example above, VBF regulates baseball in Venezuela through the registration of scouts and amateur athletes. Like the individuals of the Trinidad and Tobago Racing Authority receiving Sam P. Wallace Co.'s payments, the employees of a government agency overseeing the sport of baseball qualify as foreign officials under the FCPA.

Even if it is not considered a formal state agency, the VBF could also fall within the scope of the FCPA due to its classification as an "instrumentality" of the state. U.S. regulators instruct companies to consider a variety of factors in determining the nexus of an entity to a foreign country, such as:

- The foreign country's ownership and control over the entity;
- The circumstances surrounding the entity's creation; and

- The level of financial support provided to the entity by the foreign government.

Here, these three factors indicate a strong nexus between Venezuela and the VBF. The Venezuelan government created the VBF and supplies the organization with an overwhelming majority of its funding. Even though the federation is granted some measure of autonomy in establishing its own policies and procedures, these regulations are subject to the jurisdiction of the Ministry of Sport. Thus, employees of the VBF could also qualify as foreign officials based on the VBF's status as an instrumentality of the state.

Finally, Team A and MLB face FCPA liability even though *Buscón* corruptly provided items of value to foreign officials without actual knowledge of the team or the league. First, he was operating as an agent because his conduct was designed to benefit the team while the team was aware that he was likely representing himself to players as an affiliate of MLB or of Team A. Second, Team A's scouts were arguably aware of a high probability of the existence of a corrupt payment. They knew that *Buscón* continued to show prospects in spite of rumors that he had lost his license to do so. They also had a strong indication that he sought a bonus in excess of the local law's permitted threshold. In addition, *Buscón*'s response while discussing Player's age hints at impropriety. The FCPA does not allow Team A or MLB to ignore the existence of an improper payment if the entities are aware that such bribes are common practice and the entities subsequently fail to conduct an adequate investigation to ensure that *Buscón* is not acting in contravention of the provisions of the FCPA or local law.

OTHER POTENTIAL SCENARIOS THAT SHOULD RAISE FCPA RED FLAGS

As demonstrated above, MLB's experience in Latin America provides an example of the problems caused by league self-regulation, corrupt activity by third-party agents, and increased oversight from foreign governments. At the same time that legislation in the region increases a *buscón*'s opportunities to make corrupt payments to government regulators, MLB's augmented oversight enhances the likelihood that the actions of these infamous actors are imputed to MLB clubs or the league itself. Much like a baserunner caught wandering off of second base, these forces may cause the league and its member teams to find themselves caught in a corruption "rundown" in their attempts to acquire new talent.

Yet this is not a problem unique to MLB or to the process of acquiring talent. Aside from risks inherent in scouting and signing athletes, a league also encounters FCPA risk through attempts to expand business into a historically corrupt foreign market. Even relatively small benefits provided to government officials—from portions of salary bonuses to tickets—could constitute a costly violation, regardless of whether or not the gift or benefit originates with the team itself.

Staging a Game on the International Stage

Interactions with foreign officials during exhibitions present significant FCPA risk. Over the past 10 years, leagues have been successful in launching events in foreign markets to increase international exposure, such as the World Baseball Classic, the NBA Global Games, and the NFL International Series. As part of these initiatives, fans from foreign markets have been able to watch preseason and regular season games between two U.S. teams, as well as exhibitions between U.S. teams and foreign professional franchises. The preparation and planning of such an event requires leagues to obtain approvals and work through a substantial number of issues with federal and local government officials.

Each interaction with a foreign official presents a potential FCPA issue. For example, leagues face FCPA risk during negotiations to secure a government-operated venue to host an international exhibition. Similarly, leagues interact with government officials when contracting with local police escorts in foreign markets. League employees also face FCPA risk through interactions with customs and immigration officials. Whether it be through the acquisition of visas for team and league personnel or the shipment of goods into foreign markets, FCPA risk exists because of the potential for payments made in an effort to gain preferential treatment.

Tax waivers and foreign distributors or licensees may also present FCPA risks where government officials have discretion and the ability to provide advantages to certain parties. For example, if a government official has the ability to waive certain local taxes and is provided with something of value, that could be an FCPA violation. Again, the use of local agents to facilitate the event only increases the vulnerability to an FCPA violation, as they may be incentivized to gain as many advantages for the event as possible without significant oversight by the party subject to the FCPA. These latter risk areas are also applicable to sports leagues that license and distribute products internationally for similar reasons—for example, if a local distributor of team apparel provides government officials with something of value in order to gain favorable customs treatment for the imported goods.

Discovering the Next Yao Ming

While unique in many ways, the sports industry is very similar to most consumer-focused businesses in at least one respect. Probably the easiest way to increase revenue is to increase the number of consumers—or in the sports world, fans—that want your product. Because of the sheer volume of potential fans, China is a key market for any league looking to grow. The NBA cracked the code to growing its business in China with the discovery of all-star center Yao Ming. In many ways, the seven-foot-six Ming was not difficult to find, but he was not just another unusually tall man wearing an NBA uniform. The NBA had previously featured foreign players of comparable height, or of comparable heritage hailing from his home country of China. Yet Ming separated himself from past foreign players in that he was trained to play the game from a young age, and therefore possessed not only the physical attributes but also the necessary skills to become a star in the NBA.

In this way, Ming represents the difficulty in finding a local star in an emerging market. Great athletes can come from any corner of the globe, be it China, India, Brazil, Saudi Arabia, or any other country where a league sees a potentially untapped market. However, to excel at the professional level of any sport, it is rarely enough just to be a great athlete. Instead, it requires honing skills over a number of years with access to top-level

coaches and equipment. In other words, a league greatly increases the possibility of finding its own Yao Ming if there is a large pool of athletes in that country who grow up playing the sport.

To accomplish this goal, professional leagues may advocate for the inclusion of their sport in the physical education curriculum of the country's public schools. While there is nothing inherently wrong with these lobbying efforts, these interactions with officials of foreign governments—through local agents or league employees—open a league up to a number of vulnerabilities under the FCPA if not strictly controlled and monitored.

For example, incentives provided to local education officials—through cash or other benefits, such as tickets or memorabilia—may be viewed as kickbacks for integrating a sport into the public education curriculum. This could include incentives provided to teachers and coaches working at state-run educational institutions. Providing equipment to school board members may be permissible in certain circumstances, but benefits to individual decision makers may make the donation of such equipment appear less altruistic in the eyes of federal regulators.[15]

The hiring of a local agent to handle lobbying efforts may also raise the suspicion of federal regulators, depending on the method and quantity of compensation. For example, conditioning an agent's payment on the successful implementation of a particular sports program in a particular school district—thereby creating an incentive to lobby using any means necessary, such as kickbacks to local officials—presents significant risk under the FCPA.

Compensating individual decision makers by providing them with trips to the United States to attend a professional sports league event could also be problematic.[16] Travel payments are permissible under the FCPA if they are for a legitimate business purpose, so a trip purely to educate government officials on the sport, including attendance at live events, would not run afoul of the FCPA. However, other unrelated excursions during the trip, excessive meals and lodging, or inviting family members of the government official to attend could be considered an FCPA violation.

CONCLUSION AND RECOMMENDATION

Simply stated, a professional sports league's FCPA risk multiplies as leagues continue to promote themselves in emerging markets with histories of corruption. In response to these risks, professional leagues and their member franchises should closely examine high-risk interactions with officials of foreign governments. Leagues should remain particularly sensitive to those interactions that involve third parties acting on behalf of a league or one of its teams. Leagues would do well to adopt standard operating procedures directed specifically at corruption and bribery concerns for league and team employees, as well as third parties. Leagues should also consider establishing a regular training schedule for these employees and licensed team agents in order to ensure awareness of league-wide anticorruption policies. In addition, leagues should consider following the advice of federal regulators by "implementing an effective compliance program, which includes due diligence of any prospective foreign agents" that receive payments, either from the league or one of its member teams.[17] Finally, leagues whose member clubs have significant operations in high-risk areas should consider having their operations periodically audited by an independent third party to evaluate FCPA compliance. Where necessary, the leagues should also support internal investigations of problematic findings revealed during the audit process. While such compliance efforts are not an absolute defense to FCPA liability, they nonetheless may play a significant factor considered by the SEC and DOJ when evaluating the severity of violations and assessing penalties.

Regardless of the format of self-regulation that a league adopts, its central objective should be the same. That objective is to protect the present and future interests of the league's fans, employees, and other stakeholders by divorcing itself from any actual or perceived association with employees or agents that have a documented history of corrupt activity. When considering whether to devote resources for such self-regulation, professional sports leagues and member teams should consider the significant financial risks of noncompliance and the comparative value in proactively designing a compliance program.

Returning to our case study, Porfirio Vera, the national commissioner of baseball in the Dominican Republic in 2008, explained the status quo of talent acquisition in Latin America best when he explained, "It's been going on forever . . . because it's a business and the potential benefits are there. There's money to be made, and people always look for the easiest way to make it."[18] This approach is not unique to Latin American *buscones*, but rather exists across the world in other countries where corruption of public officials is commonplace. Federal regulators, on the other hand, continue to take an active approach toward enforcement of the statute. Cheryl J. Scarboro, former chief of the SEC's Foreign Corrupt Practices Act Unit, offered the following stern warning while announcing settlements of FCPA actions with seven oil services and freight forwarding companies in 2010: "The FCPA Unit will continue to focus on industry-wide sweeps, and no industry is immune from investigation."[19]

Endnotes

1. 15 U.S.C. §§ 78dd-1 *et seq*.

2. United States v. Kay, 359 F.3d 738, 749 (5th Cir. 2004).

3. *See* Complaint, SEC v. Panalpina, Inc., No. 10-cv-4334 (S.D. Tex. Nov. 4, 2010), *available at* www.sec.gov/litigation/complaints/2010/comp21727.pdf.

4. *See* Complaint, SEC v. Sam P. Wallace Co., No. 81-cv-1915 (D.D.C. Aug. 31, 1982); Criminal Information, United States v. Sam P. Wallace Co., No. 83-cr-34 (D.P.R. Feb. 23, 1983), *available at* www.justice.gov/criminal/fraud/fcpa/cases/sam-wallace-company/1983-02-23-sam-wallace-company-information.pdf.

5. *See* Criminal Information, *supra* note 4.

6. 15 U.S.C. § 78ff(c)(1)(A), (2)(A).

7. *See* United States v. Kay, 513 F.3d 432, 451(5th Cir. 2007); Stichting v. Schreiber, 327 F.3d 173, 183 (2d Cir. 2003).

8. 15 U.S.C. § 78ff(c)(1)(B), (2)(B).

9. Press Release, Dep't of Justice, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay $450 Million in Combined Criminal Fines (Dec. 15, 2008), www.justice.gov/opa/pr/2008/December/08-crm-1105.html.

10. SEC Charges KBR, Inc. with Foreign Bribery, Litigation Release No. 20897 (Feb. 11, 2009), www.sec.gov/litigation/litreleases/2009/lr20897.htm.

11. Lanny A. Breuer, Assistant Attorney Gen., Criminal Div., Keynote Address at the Tenth Annual Pharmaceutical Regulatory and Compliance Congress and Best Practices Forum (Nov. 12, 2009), www.justice.gov/criminal/pr/speeches-testimony/documents/11-12-09breuer-pharmaspeech.pdf.

12. Transparency Int'l, Corruption Perceptions Index 2012, at 6, *available at* http://files.transparency.org/content/download/537/2229/file/2012_CPI_brochure_EN.pdf.

13. Melissa Segura, *Ties between Dominican Prospects and Bookie Raise Concerns for MLB*, SI.com (July 23, 2008), http://sportsillustrated.cnn.com/2008/baseball/mlb/07/22/segura.drcrisis/index.html.

14. United States v. Kay, 359 F.3d 738, 750 (5th Cir. 2004).

15. *See* Complaint, SEC v. Eli Lilly & Co., No. 12-cv-02045 (D.D.C. Dec. 20, 2012), *available at* www.sec.gov/litigation/complaints/2012/comp-pr2012-273.pdf.

16. *See* Complaint, SEC v. UTStarcom, No. 09-cv-6094 (N.D. Cal. Dec. 31, 2009), *available at* www.sec.gov/litigation/complaints/2009/comp21357.pdf.

17. U.S. Dep't of Justice & U.S. Sec. & Exch. Comm'n, A Resource Guide to the U.S. Foreign Corrupt Practices Act 23 (2012), *available at* www.justice.gov/criminal/fraud/fcpa/guide.pdf.

18. T.J. Quinn & Mark Fainaru-Wada, *MLB Scouts Scandal: A Little Off the Dominican Signing Bonus Top*, ESPN Outside the Lines (Sept. 26, 2008), http://sports.espn.go.com/espn/otl/news/story?id=3609833.

19. Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Seven Oil Companies and Freight Forwarding Companies for Widespread Bribery of Customs Officials (Nov. 4, 2010), www.sec.gov/news/press/2010/2010-214.htm.

David Peet is an associate in Ropes & Gray's litigation department and a member of the firm's government enforcement practice group. He has a wide range of experience defending individuals and corporations against allegations of Food, Drug, and Cosmetic Act violations, Foreign Corrupt Practices Act and U.K. Bribery Act violations, U.S. export control violations, and financial fraud. He has also conducted proactive anticorruption compliance program reviews in China, the Middle East, and Latin America.

David Mindell is an associate in Ropes & Gray's government enforcement practice group and advises individuals and companies subject to government and other regulatory investigations, as well as related litigation. He has also assisted private equity and public company clients with developing and maintaining internal compliance procedures. He has extensive experience with sports-related matters, including NCAA compliance and eligibility. He is an officer of the board of directors for the Major League Baseball Players Alumni Association.