

October 16, 2020

## **Brazil, Bribes, and Banks: Brazilian Investment Company Pays \$265M Fine in FCPA SEC and DOJ Enforcement Action Evidencing Ongoing Corruption Risks in Equity Financing in Brazil**

### **Overview**

On October 14, 2020, Brazil-based investment company J&F Investimentos (“J&F”) pled guilty to conspiring to violate the Foreign Corrupt Practices Act and agreed to pay a \$256 million fine to the U.S. Department of Justice (“DOJ”) to resolve the case. The same day, J&F and its subsidiaries also settled with the U.S. Securities and Exchange Commission (“SEC”), agreeing to pay \$28.9 million in disgorgement and prejudgment interest.

J&F is a global conglomerate primarily involved in the meat and agriculture businesses; it is the largest meat and protein producer in the world with net revenues in 2019 exceeding \$50 billion. The DOJ and SEC found that J&F and its subsidiaries paid millions of dollars in bribes to government officials, including high-level executives at state-owned banks and a pension fund, to secure benefits, including equity financing and approval for an acquisition.

### **Improper Payments in Exchange for Financing**

The DOJ found that J&F paid bribes to Brazilian officials in a long-running scheme from 2005 to 2017 to “ensure that Brazilian state-owned and state-controlled banks would enter into debt and equity financing transactions with J&F and J&F-owned entities.” According to the DOJ, J&F paid or promised to pay more than \$148 million in bribes to high-ranking Brazilian officials. In exchange for these payments, J&F received hundreds of millions of dollars in financing from Brazilian state-owned bank Banco Nacional de Desenvolvimento Econômico e Social (“BNDES”). Separately, the DOJ found that J&F paid \$25 million in bribes to a Brazil federal legislature in exchange for hundreds of millions of dollars of financing from Caixa Econômica Federal, another state-owned Brazilian bank.

### **Improper Payments in Exchange for State Approval of Acquisition of U.S.-Based Entity**

The DOJ also found that J&F paid \$4.6 million in bribes to an executive of the Fundação Petrobras de Seguridade Social, a Brazilian state-controlled pension fund, which was required to approve J&F’s 2009 acquisition of Pilgrim’s Pride, one of the largest chicken-producing companies in the world. With the pension fund’s approval, J&F acquired a majority stake in Pilgrim’s Pride. Today, J&F owns 78.5% of the company. The SEC found that J&F exercised its control—through overlapping board members, shared policy documents, and shared office spaces—to cause Pilgrim’s Pride to fail to maintain adequate internal books and records.

### **Cooperation and Remediation**

While J&F did not voluntarily disclose the misconduct, the DOJ gave the company partial credit for cooperation and remediation, resulting in a 10 percent fine reduction off the U.S. Sentencing Guidelines (“USSG”) fine range. J&F did not receive the maximum discount of 25 percent off the USSG fine range, despite their cooperation, likely in light of the “nature, seriousness, and pervasiveness” of the offense, which included “executives at the highest level.” In issuing its fine, the SEC similarly considered J&F’s remedial actions, including cooperation for and providing the Commission with witnesses and documents located overseas. The SEC also credited J&F’s newly created compliance program in reaching the settlement.

## Key Takeaways

- **Anti-Corruption Enforcement Continues to Be a Global Affair:** J&F settled with Brazilian authorities in May 2017 for \$3.2 billion for related conduct. The DOJ agreed to credit half of J&F's criminal fine (\$128 million) for payments J&F makes pursuant to a resolution with Brazilian authorities for the same conduct.
- **State-Owned Financing Is a Key Emerging FCPA Risk:** BNDES, a state-owned development bank, is among the largest development banks in the world and has more money out in loans for development projects than the World Bank has worldwide. It provides direct and indirect capital to local entities to support economic growth in Brazil and partners with several accredited banks through on-lending to do so. Business dealings with state-connected entities like BNDES pose a high corruption risk. As a result: (1) Banks with substantial on-lending or joint-lending relationships with BNDES are at risk of becoming targets or subjects of a U.S. investigation; and (2) companies with significant investments from BNDES are also at risk of becoming targets or subjects of a U.S. probe.
- **Even Absent Self-Disclosure, Cooperation and Remediation Pay:** The DOJ found that J&F's conduct was serious and pervasive, particularly as it "included executives at the highest levels of the company and the payment of tens of millions of dollars in bribes to high-level government officials...over a period of years." Even so, both the DOJ and SEC credited the company for its cooperation with the investigation and remediation efforts. The DOJ's 10 percent reduction off the USSG fine range reflected a savings of nearly \$26 million, and J&F was not required to retain a corporate compliance monitor.