SEC FCPA Enforcement Actions 2023

VOLUME ONE

COMPLIANCE REDFLAGS

Compliance RedFlags
(Volume One)

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Published in 2026
by OdemBooks

ISBN: 978–978–68–3587–7

A catalogue record for this publication is available from the Nigerian National Library.

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01 INTRODUCTION

The Corporate Compliance Enforcement Report 2023 is a compilation of the United States Securities and Exchange Commission's enforcement of the Foreign Corrupt Practices Act (FCPA) and Securities Exchange Act, 1934 (Exchange Act). This report aims to increase awareness of the compliance obligations of corporations to which the FCPA and the Exchange Act apply and help compliance professionals keep pace with the latest developments on FCPA and Exchange Act enforcement actions by the United States Securities and Exchange Commission (the Commission).

The relentless efforts of the Commission and the Department of Justice in fighting corruption practices perpetuated outside the shores of the United States in violation of the FCPA and Exchange Act have brought to the fore the US government's commitment to curbing the tide of corporate impunity and limiting the inordinate quest for profit by transnational corporations.

As in previous years, 2023 was not merely routine. It was marked by significant FCPA and Exchange Act violations, underscoring a global issue that cannot be ignored. These violations were not isolated incidents but a widespread problem, affecting companies within the extra-territorial ambit of the FCPA and the Exchange Act due to their connection to the US Stock Exchange or registration with the Commission. The Commission reported nine (9) infractions in the year under review arising from the business conduct of corporations in Africa, Asia, the Middle East, and Europe. This report summarizes the facts of each case, identifies early warning signals that could have served as a pointer to potential violations, identifies the misconduct and violations, and concludes with a recommendation on how corporations can prevent future violations.

02 3M COMPANY

Background

3M China Company ("3M") serves as a prime example of the consequences of non-compliance. The company, a manufacturer of a wide range of products and services with its corporate headquarters in St. Paul, Minnesota, United States, found itself facing significant regulatory challenges. The Common stock of 3M is registered with the Securities and Exchange Commission by section 12(b) of the Exchange Act and trades on the New York Stock Exchange. An investigation into the business activities of 3M's subsidiary company (3M-China Limited) revealed a series of violations of the books and internal control provisions of the Foreign Corrupt Practices Act (FCPA).

These violations were carried out through manipulating records and illicit payments to Chinese government officials with the aid of third-party agents (Chinese Travel Agencies). The marketing manager of 3M–China collaborated with some Chinese government officials to disguise leisure travel provided for Chinese healthcare officials, such as overseas educational conferences and visits to healthcare facilities. The first travel itinerary for the Chinese government officials covered legitimate business, training and marketing activities, which was submitted to secure the approval of 3M–China Compliance Officer. After that, an alternative itinerary was created for tourism activities like guided tours, shopping visits to malls, historic sites and other leisure activities. The alternate travel itinerary was designed to induce Chinese officials to purchase 3M's products, while the initial itinerary was deliberately camouflaged to conceal that intent. In furtherance of this scheme, 3M China sponsored 24 overseas tourism and leisure trips for Chinese government officials, disguising them as educational events. 3M-China recorded the travel expenses as legitimate business expenses, a breach of the FCPA's internal accounting control provision.

The Red Flags

a. Use of third-party travel agencies without proper due diligence.
b. Dealing with third-party travel agencies that are not committed to ethical business practices.

The Misconducts

a. Chinese travel firms colluded to pay some government officials bribes to boost sales and meet affiliate targets.

b. There was a lack of proper parent company oversight of 3M–China's operations and use of the company's funds. Both combined led to the violation of the FCPA.
c. The deliberate falsification of records and improper description of transactions

on the company's records and books.

d. Weak internal controls and lack of effective compliance risk management program.
e. The excessive pursuit of profits and return on investment at the expense of sound and ethical business practices.

The Violations

a. 3M violated section 21(c) a of the Exchange Act, which empowers the Commission to impose a cease and desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder, and upon any other person that is, was or would be a cause of the violation, due to an act of omission the person knew or should have known would contribute to such violation

b. 3M violated the books and records provision of the FCPA, Section 13(b)(2)(a) of the Exchange Act, which requires every issuer with a class of securities registered under section 12 of the Exchange Act to make and keep books, records, and transactions and dispositions of assets of the issuer.

Penalties/Sanctions

3M was ordered to pay multiple fees in line with section 21(c) of the FCPA.

S/N	Penalties/Sanctions	Amount
1	Disgorgement Fee	$3,538,897
2	Prejudgment Interest	$1,042,721
3	Civil Money Penalty Fee	$2,000,000

Remedial Actions

The following remedial actions prompted the Commission to consider 3M's settlement offer:

a. 3M self–reported the misconduct to the Commission upon discovery.
b. Supported the investigation process by providing necessary documents and witnesses for interviews.
c. Terminated the employment of employees involved in the misconduct.
d. Terminated relationship with the China Travel Agencies.
e. Improved measures to enhance its internal control and compliance with international best practices.

Preventing future violations and lessons for other corporations

a. Employees are trained and retrained on the company's anti-bribery obligations.
b. Periodic review and auditing of subsidiary company compliance program.
c. Provision of adequate oversight over the operations of subsidiary companies.
d. Prioritization of due diligence before onboarding third-party contractors or vendors.
e. Ensure accurate reporting of transactions and keep books, records, and accounts that fairly reflect transactions and disposition of assets.

03 FRANK'S INTERNATIONAL N.V

Background

Frank's International (Frank) is a global provider of engineered tubular service and tubular fabrication and a specialist in the oil and natural resources industry[1]. Frank's top executives were in Houston, Texas, during its investigation, whilst some leadership oversights of West African operations were located abroad. Houston-based employees were responsible for reviewing and approving contracts between Frank's Angolan operations and the Angola Agent, who was complicit in bribery. Although Frank entered a Commission payment arrangement with the Angolan Agent before it became an issuer under the Securities and Exchange Act of 1934, the Commission payment continued even after Frank became an issuer. Frank sought to provide tubular services and technology support for drilling deep-water wells in Angola's offshore blocks. However, Frank could not secure a deal with any of the international oil companies holding concessions in the oil blocks because the Angolan state-owned oil company, Sonangol, opposed it.

In a desperate move to increase its business in Angola and overcome Sonangol's objection to hiring by International Oil concession companies, Frank engaged an agent without conducting due diligence or having a contract in place. The Agent had no technical background or knowledge of its business nor attended any technical meetings with Sonangol. The Agent was primarily engaged because he had relationships with Angola officials and other Sonangol employees. Frank was found to have violated the anti-bribery, books, and records accounting control of the FCPA and was indicted for making illicit payments to high-level Sonangol officials who were also employees of the Angolan government. These payments were made through the Agent who acted as an intermediary between Sonangol officials and Frank's international. The funds were meant to influence top officials in the Angolan State-owned Oil and Gas enterprise to award contracts to Frank's International over their competitors.

Red Flags

a. Use of third-party agent without a contractual agreement in place.
b. Dealing with a third-party agent with no technical background for the job he was recruited to do.
c. Frank's top management staff willfully blinded and ignorantly followed the local agent's modus operandi.

[1] Securities Exchange Act of 1934. Release No.97381/April 26, 2023.Accounting and Auditing Enforcement. Release No. 4403/April 26, 2023.Administrative Proceeding. No. 3-21397

The Misconducts

a. Payment of bribes to Angola government officials to secure improper business advantage over its competitors.
b. The deliberate falsification of records and deceitful rendition of transactions on the company's records and books.
c. Entanglement with an unlicensed sales agent and malfeasant funds paid to facilitate bribery and corruption.
d. Failure to review business operations and processes upon becoming an issuer under the Exchange Act and continuation of corrupt business practices.
e. The baneful pursuit of oil and gas contracts without regard for international best practices and standards.

The Violations

a. Frank violated the anti-bribery provisions of the FCPA and Section 30A of the Exchange Act, which makes it unlawful for any organization or company registered or domiciled in the United States to authorize payment of money, offer of gift or promise to give something of value to foreign officials to influence any act or decision of foreign government officials to obtain or retain business.

b. Frank violated the books and records provision of the FCPA and Section 13(b)(2)(A) of the Exchange Act, which requires every issuer with a class of securities registered under Section 12 of the Exchange Act to make and keep books, records and account, which in reasonable detail, accurately and fairly reflect the transaction and disposition of assets of the issuer.

c. Violation of the Exchange Act Section 13(b)(2)(B), which requires organizations or companies with a class of securities registered under Section 12 of the Exchange Act to devise and maintain a sound system of internal accounting controls sufficient to provide reasonable assurance that (i) management's general or specific authorization executes transactions; (ii) that transactions are recorded as necessary to permit preparation of financial statement in conformity with generally accepted accounting principle or any other criteria applicable to such statements, and to maintain accountability for assets; (iii) access to asset is permitted only by management's general or specific authorization; and (iv) that the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action taken concerning any differences.

Penalties/Sanctions

Frank's International was ordered to pay multiple fees in line with Section 21(c) of the FCPA.

S/N	Penalties/Sanctions	Amount
1	Disgorgement Fee	$4,176,856
2	Prejudgment Interest	$821,863
3	Civil Money Penalty Fee	$3,000,000

Remedial Actions

a. Frank self-reported the misconduct to the Commission upon discovery.
b. Improved measures to enhance its internal control and compliance with international best practices.
c. Cooperated with the Commission and supported the investigation process by providing necessary documents and witnesses for interviews.
d. Discipline of employees involved in misconduct and termination of relationships with the Angolan agent.

Preventing future violations and lessons for other corporations

a. Employees are trained and retrained on the company's anti-bribery obligations.
b. Formalization of relationships with third-party vendors through timely execution of contracts.
c. Prioritize due diligence before onboarding third-party contractors or vendors.
d. Adequate oversight over the operations of subsidiary companies and undertake periodic review and auditing of the subsidiary compliance program.
e. Ensure accurate transaction reporting and keep books, records, and accounts that fairly reflect transactions and asset dispositions.

04 Flutter Entertainment Plc is the successor-in-interest of Star Group, Inc.

Background

This case is based on the violations of books, records, and internal accounting control provisions of the Foreign Corrupt Practice Act of 1997 (FCPA) by Flutter Entertainment Plc, Flutter International, the successor of the Star group with headquarters in Dublin, Ireland[2]. The Company inherited Star Group shares registered with the Commission under Section 12(b) of the Exchange Act. Flutter International maintains several gaming and sports betting websites acquired from Star Group, including Poker Star and other online gaming brands. In its bid to expand into the Russian market where poker is prohibited, the Company retained the service of third parties to serve as an intermediary and lobby the Russian government to have poker unbanned in the country.

In the process, the Company paid a cumulated fee of approximately $8.9 million to consultants in Russia, which eventually found its way into the pockets of various Russian state officials. The transactions were also unfairly and improperly represented in the company's records, which was regarded as a breach of the FCPA Act.

Red Flags

a. Employment of third-party agents (consultants) without the necessary documentation or agreements.
b. Payment of funds to third-party agents without sufficient documentation and evidence to support the claims of services rendered.

The Misconducts

a. Illicit payment to Russian government officials
b. Flutters' determination to have poker games licensed in Russia through legal or otherwise illegal means.
c. Failure of the parent company to maintain an effective oversight over the activities of its subsidiary in Russia.
d. Flutter failed to demand the submission of the monthly invoices containing details of the consultants' service rendered.
e. Failure to effectively enforce the FCPA's anti-bribery provision.
f. Deliberate manipulations of facts and figures in the company books and records.
g. Inadequate internal accounting control system governing its relationship with

[2] Security Exchange Act of 1934. Release No.97044/March 6, 2023.Accounting and Auditing Enforcement. Release No.4384/March 6, 2023.Administrative Proceeding. File No. 3-21330

the Russian-based consultants.

h. Failure to undertake due diligence as required by the Company's policies.

The Violations

a. Flutter violated section 21(c) a of the Exchange Act, which empowers the Commission to impose a cease and desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder and upon any other person who is, was, or would be a cause of the violation due to an act of omission the person knew or should have known would contribute to such violation.

b. Flutter violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers with a class of securities registered under Section 12 of the Exchange Act to make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets.

c. Flutter violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers with a class of securities registered under Section 12 of the Exchange Act and issuer obligation under Section 15(d) of the Exchange Act to devise and maintain a system of internal accounting control sufficient to provide reasonable assurance that (i) management's general or specific authorization executes transactions; (ii) transaction are recorded as necessary to permit preparation of financial statements in conformity with general accepted accounting principles or any other criteria applicable to such statements and to maintain accountability for specific assets; (iii) access to asset is permitted only by management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken concerning any differences.

Penalties/ Sanctions/ Fines

Flutter was ordered to pay the Commission a civil money penalty of $4,0000,000.00.

Remedial Actions

a. Flutter undertook internal forensic auditing and investigation. The outcome of the findings was shared with the Commission.
b. Flutter also encouraged parties outside the jurisdiction of the Commission to provide relevant evidence.
c. Flutter improved its internal accounting controls, global compliance organization, and due diligence policies and procedures.
d. Flutter terminated its relationship with its third-party agents in Russia.

Preventing future violations and lessons for other corporations

a. Conduct due diligence on third-party agents before onboarding or execution of contracts.
b. Regular Company training and retraining of staff and third-party agents on the Company's anti-corruption obligations.
c. Request for an annual report on the activities of third-party agents.
d. Maintain stringent control and oversight over its subsidiaries.
e. Prioritize monitoring and review of subsidiaries' use of funds.
f. Internalize and domesticate international best practices regarding the code of conduct and due diligence in business processes.

05 RIO TINTO'S PLC

Background

This is a case of Rio Tinto's Plc violation of the books, records, and internal accounting control provision of the Foreign Corrupt Practices Act (FCPA)[3]. The Charges were brought against Rio Tinto's Plc because it conspired with a consultant to pay bribes to Guinean government officials to maintain its existing mining rights in Guinea.

Rio Tinto Plc is a joint venture between Rio Tinto Ltd and Rio Tinto Plc, with headquarters in Australia and the United States, respectively. Both companies' shares are listed on the New York Stock Exchange. These companies operate as a single business entity known as Rio Tinto Group. Under Section 13 of the Exchange Act, jointly file annual file report on Form 20-F with consolidated financial statements and current reports on Form 6-K. The Companies maintain a joint board of directors, and shareholders have shared economic interests.

The Genesis of Rio Tinto's problem started in 2008 when the Government of Guinea revoked Rio Tinto's right to two of the four sections known as blocks one and two for failure to develop the mine. Rio Tinto made significant efforts in the development of blocks three and four. However, in 2010, a new government of Guinea called for reexamining all mining contracts. In March 2011, Rio Tinto sometimes began searching for an advisor to help it retain its mining rights.

The Company hired a French investment banker, a former classmate of the Senior Government Official of Guinea, to act as a consultant to negotiate with Guinean officials on a deal to restore the company's mining license to operate in the Simandou region of Guinea. This consultant was not hired due to his background on the job nor his technical know-how; he was hired because of his closeness to a top Guinean government official, his classmate in Paris. The Consultant acted as an intermediary between Tinto and government officials to recover the company's mining license.

Rio Tinto paid a total sum of $10,500,000 to the consultant bank from 2011 to 2015, part of which was paid to government officials to be used for electioneering campaigns in the Country.

The Red Flags

a. Engaged a Consultant without necessary documentation or agreements.
b. There was inadequate due diligence on third-party agents engaged in providing consultancy services.
c. Disregarding the possibility of the consultant serving unofficially on behalf of

[3] Securities Exchange Act of 1934. Release No.97049/March 6, 2023.Accounting and Auditing Enforcement. Release No. 4386/ March 6, 2023.Administrative Proceeding. File No. 3-21335

government officials to pressure Rio Tinto to pay a bribe.

The Misconducts

a. Payment of bribes into the account of Guinean government officials was done through a consultant.
b. Rio Tinto's attempt to get back the mining license maintained by the company since 1997 through unethical means.
c. Failure to undertake adequate due diligence on the Consultant.
d. Disregard for internal company policy on funds transfer.
e. The company's top management officials decided to make payments through a subsidiary to hide its illicit transactions.
f. Failure to relatively document payments and expenses incurred by the company in its bid to secure the mining license.
g. Failure of the company to have sufficient internal accounting mechanisms and controls.

The Violations

Rio Tinto violated Section 21C (a) of the Exchange Act, which empowers the commission to impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder and upon any other person who is, was, or would be the cause of the violation due to an act or omission the person knew or should have known would contribute to such violation.

Rio Tinto violated Section 13(b)(2)(A) of the Exchange Act, which requires issuers with a class of securities registered under Section 12 of the Exchange Act to make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets.

Rio Tinto violated Section 13(b)(2)(B) of the Exchange Act, which requires issuers with a class of securities registered under Section 12 of the Exchange Act and issuer obligation under Section 15(d) of the Exchange Act to devise and maintain a system of internal accounting control sufficient to provide reasonable assurance that (i) management's general or specific authorization executes transactions; (ii) transaction are recorded as necessary to permit preparation of financial statements in conformity with general accepted accounting principles or any other criteria applicable to such statements and to maintain accountability for specific asset; (iii) access to asset is permitted only by management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken concerning any differences.

Penalties/Sanction/Fines

The Company was ordered to pay a civil money penalty of $15,000,000.00 to the Commission for transfer to the general funds of the United States Treasury.

Remedial Actions

a. Rio Tinto aided the Commission's investigation by promptly identifying and producing key documents it had identified during its internal investigation.
b. Rio made available both current and former employees for an interview at the Commission.
c. Rio Tinto terminated the employment of employees responsible for the misconduct.
d. Rio Tinto enhanced its internal accounting control.
e. Rio Tinto strengthened its ethics and compliance organization.
f. Rio Tinto enhanced its anticorruption risk assessment and transaction testing of compliance control.

Preventing Future Violation and Lessons for other Corporations

a. Design regular training for employees and third parties on the Company's anti-bribery obligations.
b. Enhance the code of conduct, policies, and procedures regarding gifts, hospitality, and due diligence, among other things.
c. Enhance the whistle-blowing program's effectiveness in reporting compliance violations, financial misappropriation, and bribery.
d. Improve the monitoring system and internal control of manual payment and third parties.
e. Conduct regular anti-corruption risk assessment and transaction testing of compliance control.

06 KONINKLIJKE PHILIPS N.V

Background

This is a case of violations of books, records and internal accounting provisions of the Foreign Corrupt Practice Act of 1997 by Philips China, a subsidiary of Philips[4]. Philips is a Dutch multinational corporation founded in Eindhoven, Netherlands, with headquarters in Amsterdam. The Company securities are listed on the Euronext Amsterdam Stock Exchange. As a private issuer during the relevant period, Philips Common Stock was also registered with the Commission under the Exchange Act Section 12(b) and publicly listed on the New York Stock Exchange. Philips files annual reports on form 20-F with the Commission.

Philips is a global manufacturer of health technology products, including diagnostics, imaging equipment and patient monitoring systems. Its operations in China are run by one of its subsidiaries, Philips China, with sub-contractors and sales agents. The indictment's crux was centered on Philips China's role as an enabler of corruption and other ethically repugnant schemes to boost the company's market share in the Country. Philip China specializes in providing technology such as diagnostic imaging equipment and patient monitoring systems to hospitals through its distributors and sub-dealers—in a market where most hospitals are government-owned and operated. In an increasingly competitive market, the company sought ways to boost its market share and sales in the country.

This led to the introduction of a specialized pricing discount to its sub-contractors. This policy, however, did not have the necessary authorization from the parent company, nor was it adequately documented in the records and books of Philips China.

As a result of this specialized pricing discount afforded to its sub-contractors, there was an increase in cases of sub-dealers engaging in improper conduct to win contract bids to supply Philips products to state-owned hospitals. Procurement in Chinese state-owned hospitals is done through public tender. The hospital will spell out specification targets for contractors, and whichever contractor meets the various criteria will be awarded the contract to supply that equipment.

In an attempt to have its bid selected over its competitors, Philip China's sub-contractor connived with executives in government hospitals to have its product chosen. To have Philips's bid approved for a contract valued at $4.6 million, Philips's district sales manager delivered $14,500 to the home of one of the directors of the hospital's radiological department in return for his assistance in the procurement process. In another instance, Philips contractors connived with the hospital's top

[4] Securities Exchange Act of 1934. Release No. 97479/ May 11, 2023.Accounting and Auditing Enforcement. Release No.4406/May 11, 2023.Administrative Proceeding. File No. 3-21411.

executive to tailor the procurement requirements to suit Philips products. As a result, the Commission found Philip guilty of violating the FCPA's anti-bribery and the provision of books and records. Firstly, Philip China's role as an enabler of corruption, and secondly, Philip's failure to maintain an adequate internal accounting control system over distributors' transactions.

The Red Flags

a. Attempt to bribe or outright pay a bribe to foreign government officials to influence the outcome of a decision favoring Philips.
b. Misrepresentation of facts and justification of business transactions in the record and books.

The Misconducts

a. Philip China initiated the unauthorized special pricing discount to increase sales.
b. Philip failed to maintain a sufficient internal accounting control system regarding the approval process and the recording of the special pricing.
c. Failure on the part of Philips to maintain proper oversight on its subsidiaries.
d. Failure on the part of Philips to enforce due diligence practice and procedure on its sub-contractors.
e. Failure to conduct a diligent risk assessment on its subsidiaries concerning its anti-corruption and compliance obligation.
f. Philip failed to train and retrain its staff and subsidiaries on the company's compliance and anti-corruption obligations.

The Violations

a. Philips violated section 21C (a) of the Exchange Act; the Commission is empowered to impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder and upon any other person who is, was, or would be the cause of the violation due to an act or omission the person knew or should have known would contribute to such violation.

b. Philips violated section 13(b)(2)(A) of the Exchange Act, which required every issuer with a class of securities registered to the special price discount to its distributors that contained inaccurate documentation and failed to include adequate documentation to ensure their business justification and management's approval of them. Philips violated Exchange Act Section 13(b)(2)(A) by keeping books and records relating to the special price discount to its distributors that contained inaccurate documentation and failed to include adequate documentation to ensure business justification and management's approval of them.

c. Philips violated Section 13(b)(2)(B), which requires issuers with a class of securities registered under Section 12 of the Exchange Act and issuer obligation under Section 15(d) of the Exchange Act to devise and maintain a system of internal accounting control sufficient to provide reasonable assurance that (i) management's general or specific authorization executes transactions; (ii) transaction are recorded as necessary to permit preparation of financial statements in conformity with general accepted accounting principles or any other criteria applicable to such statements and to maintain accountability for specific asset; (iii) access to asset is permitted only by management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken concerning any differences.

d. Philips violated Exchange Act Section 13(b)(2)(B) by failing to devise and maintain an adequate system of internal accounting control regarding distributor transactions and the use of third parties. In addition, Philips's internal accounting control was insufficient to provide reasonable assurance that the transaction was executed according to management's general or specific authorization and that access to assets was permitted only by management's general or specific authorization.

Penalties/Sanction/Fines

Philip was ordered to pay multiple fees in line with Section 21F(g)(3).

S/N	Penalties/Sanctions	Amount
1	Disgorgement Fee	$41,126,170
2	Prejudgment Interest	$6,047,633
3	Civil Money Penalty Fee	$15,000,000

Remedial Actions

a. Philip carried out an internal investigation and provided facts uncovered during its investigation to the Commission.
b. Philip undertook a structural adjustment program to its policies and procedures.
c. Philip disciplined and terminated the employment of staff members involved in the scheme.
d. Philip terminated business relationships with distributors involved in the bribery scheme.
e. Philip also tried to improve its internal accounting control to prevent the recurrence of such a scheme.

Preventing future violations and lessons for other corporations

a. Strengthen anti-corruption and compliance policies to prevent similar violations.
b. Improve procedures on internal accounting, third-party due diligence, and contract payment.
c. Implement periodic compliance review of internal accounting control vis-à-vis its compliance obligations.
d. Prioritize ethics and compliance considerations in performance evaluation and compensation decision-making.
   Train and retrain staff and third-party agents on the Company's anti-corruption

07 GRUPO AVAL ACCIONESY VALORES S.A AND CORPORACION FINANCIERA COLOMBIANA S.A

Background

This case focuses on violating the Anti-bribery provision, books, records and internal accounting control provisions of the Foreign Corrupt Practices Act (FCPA) by Grupo Aval through the activities of its subsidiary, Corficolombiana. Grupo Aval, a Colombian financial holding company based in Bogota, is Colombia's largest finance commercial banking group[5]. Grupo Aval's shares are listed on the New York Stock Exchange, and its securities have been registered with the Commission under Section 12 of the Exchange Act since 2011 and have reporting obligations under Section 13 of the Exchange Act. Corficolombiana is a merchant bank subsidiary of Grupo Aval, and its board of directors consists of Grupo Aval's officers.

In 2009, the Colombian Government commenced bidding for RDS 2, a 328-mile highway infrastructure project. The RDS 2 project was valued at approximately $1 billion. Corficolombiana sought partnerships with leading construction companies on behalf of Grupo Aval. Eventually, a partnership was agreed upon with a leading Brazilian construction enterprise on a joint venture to tender a bidding proposal for the construction of the RDS2, which they won. However, in 2012, companies granted rights to operate the RDS2 began to lobby government officials for contracts to see the highway extended from its original plan.

To fast-track the contract approval for the road extension, senior executives from the Brazilian construction company worked with officials from Corficolombiana to pay bribes to government officials for $28 million from 2014 to 2016 through intermediaries. Corficolombiana used no work contracts and fraudulent invoices to pay government officials. The bribery scheme provided Colombiana and other Grupo Aval subsidiaries with an unfair benefit in fees, interest income, and investment distribution, totaling approximately $32 million. These illegal profits were consolidated into Grupo Aval's financial statement and accrued to Grupo Aval through 2020.

The Red Flags

a. Hiring a third-party agent without a contract.
b. Payment of bribes to government officials.
c. Manipulation of accounting records.

[5] Securities Exchange Act of 1934. Release No.98103/August 10, 2023.Accounting and Auditing Enforcement. Release No. 4437/ August 10, 2023.Administrative Proceeding. File No. 3-21559.

The Misconducts

a. Consent to the bribing scheme by the Executive of Corficolombian
b. Failure on the part of Grupo Aval to enforce due diligence in contract negotiation on its subsidiary.
c. The executive of Corficolombiana decided to use a fraudulent invoice to pay bribes to government officials and record the transaction as legitimate business transactions.
d. Grupo Aval failed to carry out a risk assessment of its relationship with its subsidiaries.
e. Failure of Grupo Aval to maintain sufficient control of the relationships of its subsidiary.
f. Grupo failed to conduct a forensic audit of its subsidiary's books and records.
g. Failure on the part of Grupo Aval to maintain proper oversight over its subsidiary's fund use.

The Violations

a. Under Exchange Act Section 21C(a), the Commission is empowered to impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder and upon any other person who is, was, or would be the cause of the violation due to an act or omission the person knew or should have known would contribute to such violation.

b. As a result of the conduct above, the Corficolombiana Executive caused Corficolombiana to violate Section 30A of the Exchange Act, which prohibits any issuer registered under Section 12 of the Exchange Act or which is required to file reports under Section 15(d) of the Exchange Act, or any officer, director, employee or agent acting on behalf, to make use of mails or any means or instrumentality of interstate commerce corruptly in furtherance of an effort to pay or offer to pay anything of value to foreign officials to influence their decision- making, to assist in obtaining or retaining business.

c. As described above, the RDS2 joint venture used no-work contracts and sham invoices to pay bribes to Colombian government officials. These payments were recorded as legitimate business expenses in the books and records of the RDS2 joint venture and Corficolombiana and reported in Grupo Aval financial statements. In addition, the Corficolombiana Executive signed sub-certifications concerning Grupo Aval's financial reporting that falsely stated he was unaware of illegal acts. As a result, Corficolombiana caused violations of, and Grupo Aval violated, Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep accounting records and accounts which, in reasonable detail, accurately and fairly reflect transactions and dispositions of assets.

d. As described above, bribe payments to intermediaries were approved by Corficolombiana through the Corficolombiana Executive and its subsidiary, relying on invoices lacking supporting documentation or using contracts for vaguely described services typically handled internally rather than by third parties. As a result, Corficolombiana caused violations of. Grupo Aval violated Section 13(b)(2)(B) of the Exchange Act by failing to devise and maintain a system of internal accounting control sufficient to provide reasonable assurances that transactions were executed and access to assets was permitted only by management's general or specific authorization.

Penalties/Sanctions/Fines

Grupo Aval, the parent company of Corficolombiana, was fined $20,300,000. No civil penalty was imposed.

Remedial Actions

a. The Grupo Aval cooperated with the Commission staff by voluntarily providing facts discovered during its internal investigation.
b. Grupo Aval also embarked on a comprehensive risk assessment, re-evaluating and re-designing its anti-corruption compliance program, improving policies and procedures, and enhancing internal control, including those related to joint venture entities and investment.

Preventing Future Violation and lessons for other corporations

a. Allocate adequate resources to compliance program implementation and administration.
b. Prioritize monitoring and review of its use of funds by business units and subsidiary companies.
c. Maintain a robust and dynamic policy centered on anti-bribery and corruption.
d. Strengthen internal control on books and records keeping.
e. Conduct a period risk assessment of the relationship with third parties and intermediaries in line with compliance obligations.

08 CLEAR CHANNEL OUTDOOR HOLDINGS INC.

Background

Upon its investigation, the Commission found Clear Channel Outdoor Holdings Inc. guilty of violating the FCPA's anti-bribery, record, bookkeeping, and internal account control provisions. The indictment was premised on the fact that CCOH failed to adequately maintain sufficient internal control over books and records, which could have enabled it to detect the fraudulent activities of its subsidiary, Clear Media, on time.

Clear Channel Outdoor Holding Inc (CCOH or Clear Channel) is a Delaware corporation headquartered in San Antonio, Texas. Throughout the relevant period, the company's common stock was registered with the Commission under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under the Ticker "CCO."

The Violation, in focus, was made by Clear Media, which is a Bermuda-incorporated holding company headquartered in Guangzhou, China. It is a subsidiary of CCOH in China. CCOH held a majority share in Clear Media during the time in focus and exercised control of the company through three of its executives on the Clear Media board.

The crux of the matter in this case is the violation of the FCPA's anti-bribery provision due to the improper methods that Clear Media's executive employed in its bid to obtain a concession contract from local Chinese government transport authorities. Explicit media through third-party agents, known as "maintenance entities", provided illicit funds and other benefits to Chinese officials during negotiations for a concession contract for advertising in China. For instance, in December 2016, Clear Media's Hangzhou branch spent $12,800 on customer entertainment during a contract renewal negotiation with a Hangzhou transit authority.

The expenses incurred in the bribery scheme were inaccurately and unfairly detailed to hide its illegal act. These inaccurate records were consolidated in the books of CCOH without due diligence to ascertain the inaccuracies in Clear Media Books. The Commission believed with sufficient facts that CCOH obtained unfair advantages from illegal activities.

The Red Flags

a. Creating false invoices and tax records
b. Maintaining the service of an intermediary without contract.
c. The unethical way Clear Media executives pursue concession contracts from local Chinese government transport authorities.

The Misconducts

a. Payment of bribes to Chinese government officials
b. The explicit media decision to authorize illicit benefits such as gift cards, golf clubs, vases, entertainment, and other unidentified gifts to Chinese government officials during negotiation for the concession renewal.
c. The executive's coercive method was applied to staff to ensure involuntary silence regarding the corruption scheme.
d. Payment of funds to third-party agents, otherwise known as "cleaning and maintenance entities", without a contract or sufficient documentation for bookkeeping.
e. CCOH failed to exercise its control over Clear Media regarding Clear Media's continuous refusal to permit auditors access to its books and records.

The Violations

a. Under Exchange Act Section 21C(a), the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder and upon any other person who is, was, or would be the cause of the violation due to an act or omission the person knew or should have known would contribute to such violation.

b. Violation of Section 30A of the Exchange Act; this provision of the law forbids employees or third-party agents of any company acting in any capacity to use any methods at their disposal to pay bribes in the form of money, gifts, or promises of any kind to officials of a foreign government to influence the outcome of their official decision. Clear Media's payment to government officials to win bids was a clear breach of the FCPA law.

c. Violation of Section 13(b)(2)(A) this provision of the law mandated companies, which are under Section 12 of the Exchange Act, to maintain and keep books, records and accounts in reasonable detail which fairly reflect the transaction and purpose of transactions. Failure on the part of CCOH's internal accounting control mechanism to detect fraud from Clear Media's account brought it on a collision course with the law.

Penalties/Sanctions/Fines

Clear Channel International was ordered by the Commission to pay the following fees:

S/N	Penalties/Sanctions	Amount
1	Disgorgement Fee	$16,355,567
2	Prejudgment Interest	$6,000,000

Remedial Actions

a. Clear Channel made available documentation of its audits of explicit media internal control during the investigation and ensured that the documents were sufficiently translated.

b. Clear Channel facilitated the Commission staff's interview of current and former employees of CCOH's foreign subsidiaries and certain third parties.

c. Clear Channel strengthened its anti-corruption policies, procedures, and related accounting control regarding third-party due diligence, contracting, payment, and monitoring.

d. Clear Channel initiated an annual compliance review of internal accounting control across its business.

e. Clear Channel hired a compliance director to improve its resources and commitment to compliance.

f. Clear Channel introduced ethics and compliance considerations in evaluation and compensation decisions.

g. Clear Channel improved anti-corruption training programs.

Preventing future violations and lessons for other corporations

a. Strengthen anti-corruption and compliance policies to prevent similar violations.

b. Improve procedures for internal accounting, third-party due diligence, and contract payment.

c. Implement periodic compliance review of internal accounting control as a vice compliance obligation.

d. Incorporate ethics and compliance considerations into performance evaluation.

e. Train and retrain staff and third-party agents on anti-corruption obligations.

09 ALBEMARLE CORPORATION

Background

This is a case of Albemarle's violations of the FCPA's anti-bribery, books and records, and internal accounting control provisions through the activities of its subsidiaries. Albemarle is a chemical company that specializes in and sells catalysts used in oil refineries. The Company's headquarters is in Charlotte, NC. Albemarle common stock was and is still registered with the commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange under the ticker ALB.

The Company provides refining solutions through its sales offices and intermediaries worldwide. The company was found guilty of violating the Commission Act because it failed to maintain sufficient control over its subsidiaries and the failure to ensure adequate authority over its records and books, which was a result of the dubious engagement between its sales agents and foreign government officials, specifically in India, Vietnam, China, Indonesia and the UAE. There were many instances where intermediaries of Albemarle paid money directly into the accounting of some foreign official in a bid to have Albemarle selected over its competitors.

The Commission indicted the Company on the ground that it obtained fraudulent sales benefits of approximately $81.86 million with state-owned entities, some of which were due to its agent's bribing schemes with various state officials.

The Red Flags

a. Albemarle executives fail to heed the advice of experts on the red flags of the anti-bribery violation highlighted by the company's legal and compliance experts.
b. Request for an increase in commission without justification.
c. Executed a belated hat that lacked the required anti-corruption provisions.

The Misconducts

a. Bribes paid into the accounts of government officials are used to influence the outcome of the official decision in favor of Albemarle.

b. Albemarle Executive's decision to agree to third-party agents' demands to increase their commission without due diligence to satisfy itself that the increment was justified in line with anti-corruption obligations.

c. Authorize the agent's commission despite insufficient due diligence and lack of formal contract.

d. Albemarle failed for several years to institute a sufficient compliance system and devise and maintain an adequate internal accounting control system concerning payment and oversight of its intermediaries.

e. Deceitful attempt to disguise the true intention of the amount paid, the entity paid and the justification of the payment in official records.

The Violations

a. Under Exchange Act Section 21C (a), the commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act or any regulation thereunder and upon any other person who is, was, or would be the cause of the violation due to an act or omission the person knew or should have known would contribute to such violation.

b. Albemarle violated Section 30A(a) and (g) of the Exchange Act of the FCPA (199), the provision of the prohibited employees or agents' companies, under the jurisdiction of the commission to pay a bribe or offer to pay bribes to foreign government officials to influence their official decision-making to assist in obtaining or retaining business.

c. Albemarle violated Section 13(b)(2)(A) of the FCPA. The provision mandated companies to make and keep books, records, and accounts in reasonable detail, accurately and fairly reflecting transactions and disposition of assets. Albemarle's books and records did not accurately depict the true purpose of payment to their agents in Vietnam, India, Indonesia, China and the UAE. These transactions were instead recorded as legitimate business transactions. Additionally, Albemarle failed to implement a sufficient system of internal accounting mechanisms to ensure that the management duly authorized access to assets.

Penalties/Sanction/Fines

Albemarle was ordered to pay the following fees;

S/N	Penalties/Sanctions	Amount
1	Disgorgement Fee	$81,856,863
2	Prejudgment Interest	$21,761,447

Remedial Actions

a. Albemarle self-reported the infractions to the Commission upon discovery.

b. Notified the Commission of the outcome of its internal investigation.

c. Made former and current employees available to the Commission's staff for questioning.

d. Terminated employment and contract of intermediaries involved in the bribery scheme.

e. The Company initiated a forensic audit of the books and records of its subsidiaries.

f. Revamped its anti-corruption policies, procedure and mechanism.

g. Reinforced its oversight over internal accounting control and introduced data analytics technology to track and monitor transactions.

Preventing future violation and lessons for other corporations

a. Undertale risk assessment and due diligence on third-party agents before onboarding.

b. Maintain proper oversight over the activities of subsidiary companies.

c. Train staff members and third-party agents on compliance and due diligence concerning contract procedures and transactions.

10 GARTNER CORPORATION VS SECURITIES AND EXCHANGE COMMISSION

Background

Gartner Inc. was indicted because it breached the anti-bribery, boobooks and records, and internal accounting control provision of the Foreign Corrupt Practice Act due to a bribery scheme involving its affiliate third-party agents and some top executives from the South African Revenue Service (SARS)[6].

Gartner Inc. is a US public company incorporated in Delaware and headquartered in Connecticut. Gartner Stock was registered under Section 12(b) of the Exchange Act and traded on the New York Stock Exchange under IT. Multiple sales agents ran the Company's South Africa operations, including Future Trends Limited, Zimelayo Research & Consulting Pty, and IT Management Advisory Service Plc. A private company director with links to the upper management level of the South African Revenue Service reached out to Zimelayo, saying that the government agency wanted to assess its information technology system. Zimelayo was invited officially by SARS to discuss the potential arrangement of the project and the terms of reference for the proposal. Zimalyo relayed Gartner's response to the project proposal as its representative in the country. However, the executive of SARS introduced another dimension to the proposal by suggesting that Gartner procure the services of a private company to be qualified to win the bid for the project.

In 2015, SARS signed multiple contracts with Gartner with a cumulative value of $11 million. No reference to any private company nor the B-BBEE was cited on the official documentation as the requisite for the contract. Additionally, Gartner did not sign any sub-contract with the private company. Instead, it directed one of its agents (Zimelayo) to engage four individuals with close links with senior officials within the SARS procurement division to execute the project on behalf of Gartner.

In an email to a colleague, Gartner's consulting manager, it was revealed that 40% of the contract would go to the private company. However, the contract terms did not reference the percentage paid or a private company. Therefore, the money paid to the private company through Zimelayo could have ended up in the pockets of top SARS officials directly or indirectly. This could also be in gifts and promises because of the coercive tactics in getting Gartner to hire those four individuals. Consequently, the Securities and Exchange Commission deemed this a violation of its anti-bribery, books and records and internal accounting control provision of 1997.

[6] Securities Exchange Act 1934 Release No. 97609/May 26, 2023. Accounting and Auditing Enforcement Release No. 4411/May 26,2023. Administrative Proceeding File No. 3-21470.

The Red Flags

a. Engagement of third-party agents without contract
b. Payment to a third party through unofficial means
c. Misrepresentation of facts in accounting books and records

The Misconducts

a. Lack of risk-based screening procedures for hiring third-party contractors.
b. Lack of anti-corruption vendor onboarding procedures and adequate monitoring.
c. Gartner failed to maintain a policy sufficient to address the anti-corruption risk associated with third-party agents adequately.
d. Gartner failed to maintain proper internal records and bookkeeping control.
e. Deliberate omission of the participation of a private company in the contract executed with SARS.
f. Gartner's deliberate blindness to the possibility of an insider job scheme by The Executives of SARS.

The Violations

a. Gartner violated Section 21C (a) of the Exchange Act, which empowers the Commission to impose a cease-and-desist order upon any person who is violating, has violated or is about to violate any provision of the Exchange Act or any regulation thereunder and upon any other person who is, was, or would be the cause of the violation due to an act or omission the person knew or should have known would contribute to such violation.

b. As described above, the Gartner consulting manager authorized multiple payments to the private company concerning the SARS' Phase I and II contracts. The Gartner consulting manager had been advised of (i) the private company's executive directors' close relationship with a senior SARS official, (ii) his role in introducing Gartner to SARS and setting expectations with SARS officials, and (iii) SARS directed Gartner to hire the private company and pay it fixed percentage of the SARS contract in other to win the contract on a sole basis. The Gartner consulting manager also knew or consciously avoided knowing that the purported justification for hiring the private company. SARS told Gartner to hire the private company to qualify for the contract under the South African B-BBEE legislation – was false. Gartner consulting manager knew or consciously disregarded the high probability that the private company's executive director would offer or provide the payment his company received, or a portion thereof, to SARS officials to influence such officials to obtain or retain business for Gartner. As a result, Gartner was awarded the Phase I and Phase II SARS contracts and received ill-gotten net profits associated with the contracts of $675,974.

c. As a result of the conduct described above, Gartner violated Section 30A of the Exchange Act, which prohibits, in relevant part, any issuer with a class of securities registered under Section 12 of the Exchange Act or any officer, director, employee, or agent acting on behalf of such issuer or any stockholder acting on behalf of an issuer, to obtain or retain business, from corruptly giving or authorizing the giving of anything of value to any person, while knowing that all or portion of such thing of value will be offered, given, or promised, directly or indirectly, to any foreign official to influence the official or induce the official to act in violation of their lawful duties, or to secure improper advantage, or to cause a foreign official to use his influence with a foreign governmental instrumentality to influence any act or decision of such government or instrumentality.

d. As a result of the conduct described above, Gartner violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records and accounts in reasonable detail, accurately and fairly reflect their transaction and dispositions of their assets.

e. Gartner failed to devise and maintain sufficient internal accounting controls around identified FCPA risk relating to sales agents, consultants and third-party relationships with public sector clients. As a result of the conduct described above, Gartner violated.

f. Section 13(b)(2)(B) of the Exchange Act requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements by generally accepted accounting principles.

Penalties/Sanctions/Fines

Gartner was ordered to pay the following fees:

S/N	Penalties/Sanctions	Amount
1	Disgorgement Fee	$675,974.00
2	Prejudgment Interest	$180,790.00

Remedial Actions

a. Gartner self-reported the infraction to the Commission upon discovery.
b. Gartner shared findings from its Internal investigation with the Commission.
c. Gartner made available foreign-based employees for interview.
d. Gartner strengthened its policies, procedures and training program on due diligence.

e. Gartner increased the resources available to its compliance unit for greater effectiveness.

Preventing future violation and lessons for other corporations

a. Maintain sufficient internal accounting controls around identified FCPA risk.

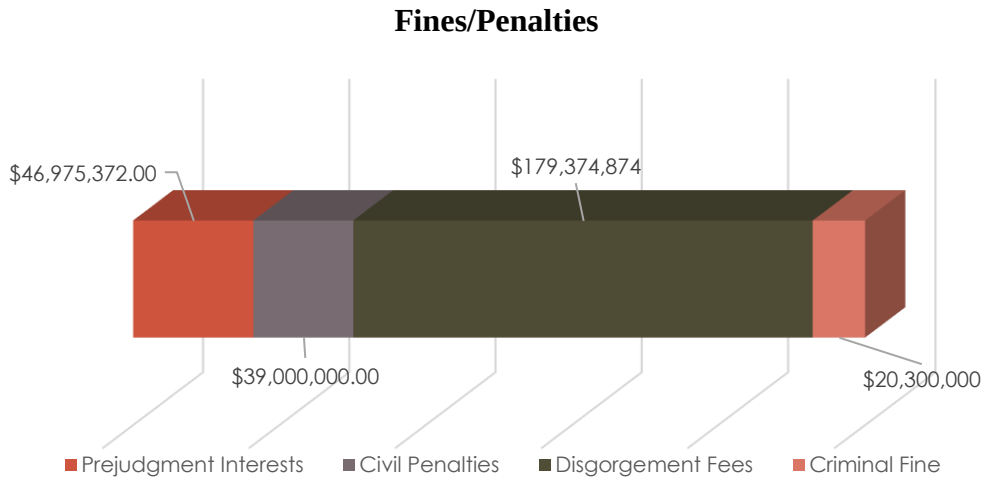
b. Keep books, records, and accounts in reasonable detail and accurately and fairly reflect.

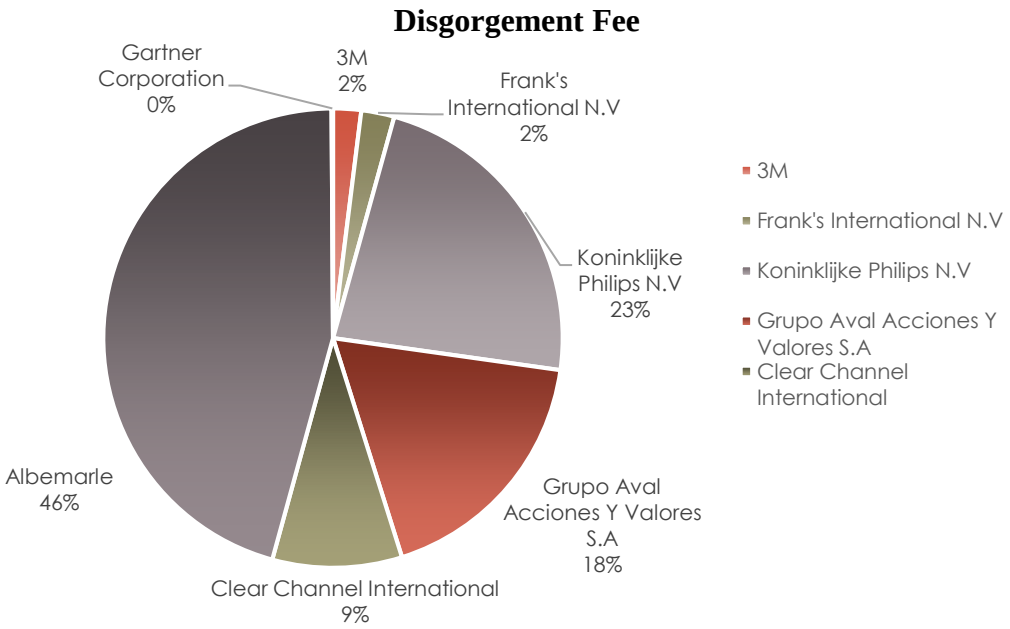
c. Carry out risk assessments on sales agents, consultants or third parties.

d. Maintain proper oversight over operations and activities of subsidiary companies.

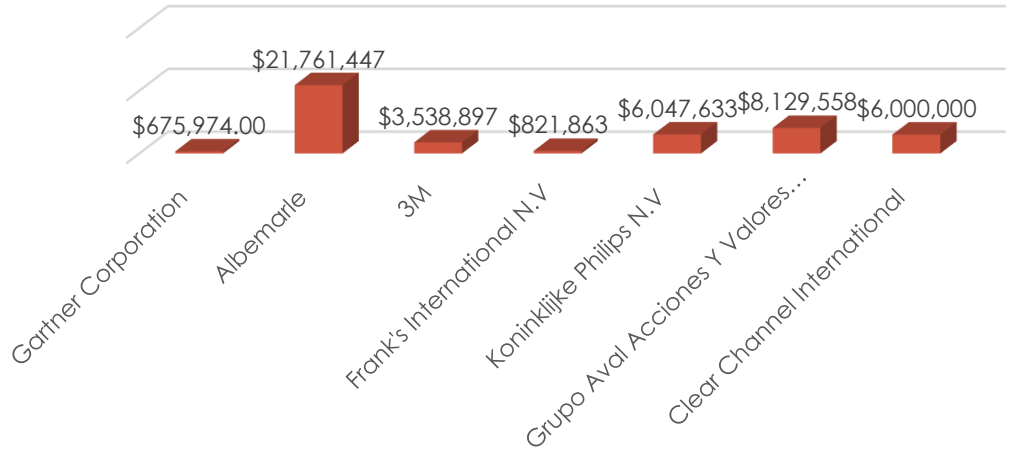
Prioritize training and retraining of its staff, consultants, and subsidiaries on good

11 DATA TRENDS





Prejudgment Interest



Civil Penalties