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Myanmar and the Dodd-Frank Whistleblower “Bounty”: The U.S. Foreign Corrupt Practices Act and Curbing Grand Corruption Through Innovative Action

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**MYANMAR AND THE DODD-FRANK
WHISTLEBLOWER “BOUNTY”: THE U.S.
FOREIGN CORRUPT PRACTICES ACT AND
CURBING GRAND CORRUPTION THROUGH
INNOVATIVE ACTION***

MARK V. VLASIC** & PETER ATLEE***

I. INTRODUCTION	442
A. GLOBAL IMPACT OF CORRUPTION	444
B. INTERNATIONAL EFFORTS TO FIGHT CORRUPTION	445
C. AMERICAN EFFORTS TO FIGHT CORRUPTION: DODD- FRANK	445
II. FIGHTING INTERNATIONAL CORRUPTION IN THE UNITED STATES	447
A. THE CURRENT STATE OF GLOBAL CORRUPTION	447
B. THE FOREIGN CORRUPT PRACTICES ACT	449

* A shorter and simplified version of this work, designed for a non-legal audience—and without a focus on Myanmar—was published in The Fletcher Forum of World Affairs. See Mark V. Vlasic & Peter Atlee, *Democratizing the Global Fight Against Corruption: The Impact of the Dodd-Frank Whistleblower Bounty on the FCPA*, 36 FLETCHER FORUM 79 (Summer 2012).

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C. THE DODD-FRANK FINANCIAL REFORM LEGISLATION AND REGULATIONS	451
III. CONVINCING AND ALLOWING PRIVATE INDIVIDUALS TO FIGHT CORRUPTION.....	455
A. THE COLLECTIVE ACTION PROBLEM AND THE FIGHT AGAINST CORRUPTION	456
B. PUBLIC CHOICE THEORY AND FCPA LOBBYING	460
C. USING SEC DISCRETION TO MAINTAIN A BALANCE OF INTERESTS UNDER THE NEW FCPA.....	461
IV. APPLICATION TO MYANMAR AND CONCLUSION..	463

I. INTRODUCTION

The past few years have been all but revolutionary for Myanmar. In 2010, the country held its first elections after decades of rule by a military junta. Shortly thereafter, Nobel Peace Prize recipient and leader of the National League for Democracy (“NLD”), Aung San Suu Kyi, was released from house arrest after fifteen years. In 2012, she won a seat in the country’s parliament, and at the World Economic Forum in Nay Pyi Taw in 2013, she announced her interest in running for office of President of Myanmar.¹ But in spite of its progress, Myanmar is still a country best known for its bureaucratic inefficiency and corruption. In 2012, it ranked 172 out of 183 countries in Transparency International’s Corruption Perception Index.² After decades of junta rule, the military still influences all sectors of the economy and government; furthermore, according to analysts, strong links exist between the ruling elite and organized crime.³ The 2010 and 2012 elections, while milestone events, were reportedly mired in fraud and irregularities.⁴ According

1. Aung San Suu Kyi, Statement to Nik Gowing of BBC News at the World Economic Forum for East Asia (June 6, 2012).

2. *Corruption Perceptions Index 2012*, TRANSPARENCY INT’L, <http://cpi.transparency.org/cpi2012/results/> (last visited Oct. 13, 2013).

3. *Overview of Corruption in Burma (Myanmar)*, ANTI-CORRUPTION RESOURCE CENTRE (2012), <http://issuu.com/cmi-norway/docs/349/7?e=1246952/2680739> (noting the prevalence of trafficking in narcotics, people, wildlife, gems, and timber, and alleging that “[c]ollusion between traffickers and Burma’s ruling military junta . . . allows organised crime to function with virtual impunity”).

4. *See id.* at 3 (pointing to independent candidates’ reports of harassment and restrictions placed on opposition political parties such as high registration fees,

to skeptics, cronyism and illegal payments to bureaucrats are still the way business gets done in Myanmar. Compounding the problem, nascent democratic institutions lack the strength and system of checks and balances to effectively curb corruption or expel corrupt officials.⁵

The new reformist government, elected in 2010 and led by Thein Sein (a former member of the military junta), has vowed to tackle corruption as an impediment to the fledgling democracy's growth and development. The military junta primarily employed corruption charges to eliminate political threats,⁶ but the new government has recently initiated seemingly legitimate corruption investigations. In January 2013, Myanmar charged Thein Tun, a former telecommunications minister, and dozens of other government officials as part of an investigation into corruption in the country's telecommunications industry; Thein Tun was placed under house arrest.⁷ According to reports, the telecommunications industry in Myanmar is particularly corrupt—with SIM cards costing approximately \$250, versus just \$1.50 in neighboring countries,⁸ and with pre-paid SIM cards often unable to be re-charged.⁹

denied access to the state media, and constrained elections monitoring).

5. See *Corruption Perceptions Index 2012*, *supra* note 2 (remarking that, in lieu of checks and balances, the institutions that Myanmar has in place to stave off corruption appear to be outdated and undeveloped, making them more likely to be improperly taken advantage of for political gain).

6. Embassy Rangoon, Cable 04RANGOON1462, *The Burmese Regime Airs Its Dirty Laundry: Former PM "Corrupt and Insubordinate"* (Nov. 12, 2004), available at <http://www.cablegatesearch.net/cable.php?id=04RANGOON1462> (opining that the military regime charged former prime minister Khin Nyunt with corruption as an excuse to remove him based on a long-standing hatred and fear associated with a military intelligence apparatus that knew no limits and focused attention not only on overt threats to the status quo, but also on the regime itself).

7. Aung Hla Tun, *Myanmar Launches Major Graft Probe at Telecoms Ministry*, REUTERS, Jan. 24 2013, available at uk.reuters.com/assets/print?aid=UKL4N0AT29I20130124 (reporting that this major investigation of government officials and workers came one month after President Thein Sein vowed to clean up corruption and that it is part of an effort that freed hundreds of political prisoners, relaxed censorship laws, and helped hold free elections).

8. See *id.* at 1 (noting that these prices are some of the world's most expensive).

9. See Ko Tha Dja, *SIM Card Corruption in Burma Stalls Progress*, DISSIDENT VOICE (Sept. 23, 2013), <http://dissidentvoice.org/2013/09/sim-card-corruption-in-burma-stalls-progress/> (detailing low-level corruption in the Myanmar telecommunications market and explaining that certain SIM cards must

In January 2013, the government also formed an anti-corruption committee,¹⁰ and in June 2013, a two-day workshop was held in Nay Phi Taw to discuss rewriting the country's antiquated Suppression of Corruption Act of 1948.¹¹ A statement from the Home Ministry called for public participation in the elimination of corruption.¹²

Public participation to end corruption may be a tall order in a country where the per capita GDP (adjusted for purchasing power parity) in 2012 was just \$1,400 (203 out of 229 in the world).¹³ Poverty is undoubtedly linked to corruption in Myanmar, and the new government may have a difficult time convincing its struggling people that the fight against corruption is worth their time. The Dodd-Frank Act, recently passed in the United States could prove instructive to Myanmar's government as it attempts to shift public attitudes surrounding corruption.

A. GLOBAL IMPACT OF CORRUPTION

Corruption is a global problem. The World Bank estimates \$20–\$40 billion are stolen in and from developing countries every year.¹⁴ The lives of Mu'ammar Qadhafi, Charles Taylor, Slobodan Milosevic, and Sani Abacha are high-profile examples of the toll that global corruption exacts on the developing world, but lower-profile

be activated within fourteen days of purchase or the user must pay a fee to unlock the card).

10. See *Myanmar Establishes Anti-Corruption Committee*, THE NATION, Jan. 9, 2013, <http://www.nationmultimedia.com/breakingnews/Myanmar-establishes-anti-corruption-committee-30197566.html> (quoting President Thein Sein's announcing, "As part of efforts for the emergence of good governance and clean government after the new government took office, an action committee against corruption is formed to fight the corruption and bribery in governmental organisations").

11. See *Myanmar Holds Workshop on Drafting Anti-Corruption Bill*, GLOBAL TIMES (July 30, 2013), www.globaltimes.cn/content/792582.shtml#UlnGjFCko_A (reporting that the workshop focused on parliament's obligations under the U.N. Convention Against Corruption).

12. See *id.* at 1 (stating that the Home Ministry believes that clean government can be achieved with the help of public participation and that citizens should report bribery cases to the Bureau of Special Investigation and Head Office of the Home Ministry).

13. *Burma*, CIA WORLD FACTBOOK (Sept. 10, 2013), <https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html>.

14. *Stolen Assets and Development*, STOLEN ASSET RECOVERY INITIATIVE, www1.worldbank.org/finance/star_site/stolen-assets.html (last visited Feb. 7, 2013).

examples—e.g., bribery of local police and bridges that are never built (or are built poorly)—exact just as high a toll and may be harder to root out. Until now, most of the work fighting global corruption and recovering stolen assets has been the work of government agencies and intergovernmental organizations.¹⁵

B. INTERNATIONAL EFFORTS TO FIGHT CORRUPTION

The U.N. Convention Against Corruption obliges signatory governments to return illicit assets to their rightful owners.¹⁶ Governments often work together to find, freeze, and return assets stolen by corrupt officials.¹⁷ The World Bank and the U.N. Office of Drugs and Crime have also partnered to create the Stolen Asset Recovery Initiative (“StAR”) which works with developing countries and financial centers to prevent money laundering and to help trace and recover the proceeds of grand corruption.¹⁸ Many countries also have their own bribery laws aimed at national and multinational corporations within their borders.

C. AMERICAN EFFORTS TO FIGHT CORRUPTION: DODD-FRANK

In 2010, the United States passed a novel law that could permanently change the landscape of the fight against global corruption by enlisting the services of private individuals: the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”).¹⁹ Though it made headlines throughout the United States when it passed, few news outlets highlighted what may become a lasting legacy of the law: democratizing the fight against corruption. Buried in Dodd-Frank is language amending the Foreign Corrupt Practices Act (“FCPA”) – the United States’ version of anti-bribery

15. See, e.g., *Anti-Corruption Links*, ACT AGAINST CORRUPTION, www.actagainstcorruption.org/actagainstcorruption/en/resources/index.html (last visited Oct. 12, 2013).

16. U.N. Convention Against Corruption arts. 51, 57, Oct. 31, 2003, G.A. Res. 58/4, U.N. Doc. A/RES/58/4.

17. E.g., Mark V. Vlasic & Gregory Cooper, *Fast Cash: Recovering Stolen Assets*, AMERICAS Q. (2010), available at <http://www.americasquarterly.org/node/1901> (detailing cooperation between Swiss, Haitian, and StAR officials in recovering assets that former Haitian president Jean-Claude Duvalier had stolen).

18. *Stolen Assets and Development*, *supra* note 14.

19. Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301 (2010).

legislation—awarding whistleblowers potentially millions of dollars for tipping off the U.S. government to corruption by and bribery of foreign officials.²⁰

For centuries, under the Alien Tort Statute, the United States has provided aliens with the right to be compensated for violations of international law.²¹ Now, under the FCPA, private citizens will also have the right to be compensated for helping stop corruption. *In other words, for the first time, private citizens will have a stake in—and an avenue for reaching—the global fight against corruption.*

This paper will argue that, through the Dodd-Frank amendments to the FCPA, the United States has provided a possible model legal framework—including for countries like Myanmar—for expanding state resources in the fight against global corruption by solving the collective action problem and incentivizing individual participation in a realm that has traditionally been the exclusive purview of state actors. Part II will discuss the state of global corruption in 2012 and the U.S. legal framework for fighting that corruption. Part III will argue that information inequalities and opportunity costs have hampered efforts to fight international impunity. Dodd-Frank seeks to mitigate both of these problems by solving the collective action problem and enlisting the support of private actors. Part III will also briefly discuss how solving the collective action problem has adjusted the balance of interests under the public choice theory and why governmental discretion is imperative to the success of the new U.S. model framework. We conclude by arguing that the Government in Myanmar could find the Dodd-Frank anti-corruption framework to be a useful model for deputizing citizens in the fight against corruption.

20. *FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act*, U.S. DEP'T JUST. (Nov. 14, 2013), <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf> [hereinafter *Resource Guide to the FCPA*] (noting that Dodd-Frank added Section 21F to the Exchange Act to authorize the SEC to provide monetary awards to certain eligible whistleblowing individuals).

21. 28 U.S.C. § 1350 (1789).

II. FIGHTING INTERNATIONAL CORRUPTION IN THE UNITED STATES

A. THE CURRENT STATE OF GLOBAL CORRUPTION

The worst corruption often occurs in political parties, the bureaucracy, and the legislature,²² but petty corruption, or bribery, is perhaps the most prevalent. One in four people worldwide report having paid a bribe, most often to police and most often to avoid trouble with authorities or to “speed things up.”²³ Bribery is the most widespread in Sub-Saharan Africa, where over half of individuals report having paid a bribe.²⁴

Furthermore, corruption is not going away in the twenty-first century. Over half of respondents to a 2010 survey thought that corruption had increased over the past three years, with the greatest increases coming from the European Union (seventy-three percent of respondents believe that corruption increased) and North American countries (sixty-seven percent).²⁵ In 2011, Transparency International found that highly corrupt countries—of which there were more than sixty—outnumbered the countries mostly free from corruption.²⁶

Myanmar, considered by some as one of those highly corrupt countries, ranked 180 out of the 183 countries and territories surveyed by Transparency International in 2011 and received a score of 1.5 out of 10.0 on the Corruption Perceptions Index.²⁷ The

22. See Juanita Riaño et al., *Global Corruption Barometer 2010*, TRANSPARENCY INT’L 8–9 (2010), http://www.transparency.de/fileadmin/pdfs/Wissen/Korruptionsindices/GCB_2010.pdf (using survey responses to show an overwhelming global perception that political parties are most corrupt, closely followed by public servants, parliaments, and the police).

23. *Id.* at 12–13, 19 (examining responses of 77,000 users of nine basic services—customs, education, the judiciary, land-related services, medical services, the police, registry and permit services, tax authorities, and utilities, and finding one out of four respondents have paid a bribe in the past year).

24. See *id.* at 16–17 (finding that fifty-six percent of users of the nine basic services in Sub-Saharan Africa admit to having paid a bribe to a service provider).

25. See *id.* at 5 (noting that while corruption may have increased most in Western Europe and the United States, corruption is also expanding globally, with forty-five percent of respondents believing that corruption had increased in Russia and the former Soviet Union, and fifty-seven percent of respondents believing corruption had increased in the Middle East and North Africa).

26. *Corruption Perceptions Index 2012*, *supra* note 2, at 4.

27. *Id.*

country's porous border and lack of effective anti-corruption institutions have made Myanmar a prime target for trafficking in narcotics, people, wildlife, and other contraband. In 2006, the World Bank estimated that illegal logging harvest rates in Myanmar could exceed legal harvest rates by as much as eighty percent, and joint ventures between foreign and state-owned oil and gas firms, which are mandated by domestic law, lack transparency and accountability. Moreover, Myanmar is the primary source for amphetamine-type stimulants in Asia, and, according to U.S. Department of State's estimates, several thousand citizens of Myanmar are victims of human trafficking each year—both internal and international trafficking.²⁸ Citizens of highly corrupt countries often believe government efforts to fight corruption are ineffective. Despite the increase in corruption and these perceptions of ineffectiveness, people still believe the media and governments are crucial to fighting global corruption.²⁹ Consequently, many countries and regions have begun building anti-corruption coalitions and transparency initiatives. The United States, in part out of a concern that its businesses might be left behind in unfair competitions, has been a major driving force in building these coalitions and initiatives.

In 1996, members of the Organization of American States ("OAS") adopted the Inter-American Convention Against Corruption, which commits its members to standardize their criminal anti-corruption laws.³⁰ Then, in 1997, the Council of Europe's Committee of Ministers adopted twenty guiding principles for compliance with the Council's various anti-corruption conventions.³¹ Eleven African countries have adopted twenty-five anti-corruption

28. See generally Marie Chene, *Overview of corruption in Burma (Myanmar)*, U4 HELPDESK, TRANSPARENCY INTERNATIONAL, (Oct. 1, 2012), <http://www.u4.no/publications/overview-of-corruption-in-burma-myanmar/>.

29. See Riaño et al., *supra* note 22, at 24–26 (highlighting survey results that reflect that the general public would most trust the media as the one institution most likely to stop corruption).

30. Inter-American Convention Against Corruption art. 2, Mar. 29, 1996, 35 I.L.M. 724 (focusing on the need to "promote, facilitate and regulate cooperation among State Parties . . . to eradicate corruption in the performance of public functions").

31. *On the Twenty Guiding Principles for the Fight Against Corruption*, COUNCIL OF EUR. COMM. OF MINISTERS (Nov. 6, 1997), available at [http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution\(97\)24_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution(97)24_EN.pdf).

principles as part of the Global Coalition for Africa.³² And in Asia, the Asia-Pacific Economic Cooperation promotes government transparency and accountability reforms to create better investment climates.³³ Moreover, thirty-nine countries have signed the Organization for Economic and Cultural Development's ("OECD") Convention, which requires each country to enact strong anti-corruption legislation.³⁴

International organizations have also been active in the fight against global corruption. The U.N., the World Bank, and the International Monetary Fund ("IMF") have stated that corruption impedes economic growth and have established units to help fight corruption.³⁵

B. THE FOREIGN CORRUPT PRACTICES ACT

In 1977, the United States enacted the FCPA to counteract corrupt behavior by American companies after a Securities and Exchange Commission ("SEC") investigation revealed illegal foreign payments made by over 400 companies totaling over \$300 million.³⁶ Despite Congress' enactment of the FCPA, corruption skyrocketed by the

32. *Fighting Global Corruption: Business Risk Management*, U.S. DEP'T ST. 14 (2003), <http://cdm16064.contentdm.oclc.org/cdm/ref/collection/p266901coll14/id/2484> [hereinafter *Fighting Global Corruption*].

33. *APEC Course of Action on Fighting Corruption and Ensuring Transparency*, ASIA-PACIFIC ECONOMIC COOPERATION (Nov. 17–18, 2004), available at http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Working-Groups/~media/Files/Groups/ACT/04_amm_033rev2.ashx.

34. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of 20 November 2012*, ORG. FOR ECON. CO-OPERATION & DEV. (Nov. 20, 2012), <http://www.oecd.org/daf/anti-bribery/antibriberyconventionratification.pdf>.

35. *Fighting Global Corruption*, *supra* note 32, at 16 (noting that the World Bank and the IMF have declared that corruption must be addressed in the context of economic and financial evaluations and assistance programs to combat its deterrent effects).

36. 15 U.S.C. § 78dd-1(a) (1998); *Resource Guide to the FCPA*, *supra* note 20, at 3 (citing U.S. SEC. & EXCH. COMM'N, 94TH CONG., REP. OF THE SEC. & EXCH. COMM'N ON QUESTIONABLE AND ILLEGAL CORPORATE PAYMENTS AND PRACTICES 2–3 (1976), available at <http://www.sec.gov/spotlight/fcpa/sec-report-questionable-illegal-corporate-payments-practices-1976.pdf>) (explaining that companies falsified corporate financial records to hide illegal payments made to U.S. political campaigns and to foreign officials abroad from secret "slush funds").

early 2000s: between 1994 and 2001, foreign firms from fifty countries allegedly paid bribes in over 400 international contract biddings.³⁷ Though the pace of corruption has not slowed, the FCPA has played an increasingly important role in deterring corrupt conduct. In recent years, single cases have yielded penalties of hundreds of millions of dollars.³⁸

The FCPA makes it unlawful for any U.S. person—natural person, juridical person, or one acting on their behalf—to bribe a foreign official (or candidate for office) to obtain or retain business.³⁹ The statute is written broadly so most people and companies with some connection to the United States, including foreign firms who act in furtherance of a corrupt payment while in the United States, fall within its scope.⁴⁰ This “Business Purpose Test” is interpreted broadly to apply even when the business being obtained or retained is not associated directly with a foreign government.⁴¹

The Act exempts payments made to facilitate, expedite, or secure the performance of routine government action—such as expediting the processing of visas or permits, or obtaining police protection or phone services.⁴² It also provides several affirmative defenses, including (1) that the action was lawful under the laws of the country in which it was performed, despite how highly unlikely it is that any other country’s laws permit bribery, or (2) the action involved a bona fide expenditure.⁴³

The U.S. Department of Justice (“DOJ”) and the SEC are charged

37. *Fighting Global Corruption*, *supra* note 32, at 3 (noting that bribing firms were competing for contracts valued at a total of \$200 billion).

38. Mike Koehler, *FCPA 101, How Are FCPA Fines, Penalties, and Sentences Calculated?*, FCPA PROFESSOR (2012), <http://www.fcpaprofessor.com/fcpa-101#q17> (setting forth the largest corporate FCPA settlements); *see, e.g., Resource Guide to the FCPA*, *supra* note 20, at 22 (highlighting the FCPA’s explicit prohibition on payments made through third parties and pointing to a prosecution of four multi-national corporations, which relied on third parties to bribe Nigerian officials, that resulted in \$1.7 billion in civil and criminal sanctions).

39. 15 U.S.C. § 78dd-1(a).

40. *Resource Guide to the FCPA*, *supra* note 20, at 10.

41. *Id.* at 12.

42. 15 U.S.C. §§ 78dd-1(b), (f)(3).

43. 15 U.S.C. § 78dd-1(c) (defining bona fide expenditures as including travel and lodging payments either related generally to the promotion of products or services, or related to the execution or performance of a contract with the foreign government).

with and effectively carry out enforcement of the FCPA. Penalties for violating the FCPA bribery and accounting provisions are heavy and are generally increased for willful violations.⁴⁴ Corporate violators may be suspended or debarred from competing in the federal procurement process and may face heavy criminal fines, up to \$2 million, for each violation.⁴⁵ Individual violators, on the other hand, may face criminal fines of up to \$100,000 or five years in prison.⁴⁶ Additionally, the government can bring a civil suit for up to \$10,000 per violation by both individuals and corporations.⁴⁷ Moreover, the Alternative Fines Act can increase penalties to twice the pecuniary benefit sought by violating the Act. The Act also allows courts, at their discretion, to impose additional fines equaling or exceeding the defendant's pecuniary gain.⁴⁸

No private cause of action exists under the FCPA, but violations of the Act may also fall within the scope of federal racketeering laws, which do have private causes of action.⁴⁹ Corrupt behaviors also include violations of U.S. mail and wire fraud statutes, the Travel Act, or state bribery statutes.⁵⁰

C. THE DODD-FRANK FINANCIAL REFORM LEGISLATION AND REGULATIONS

In July 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which mandates a series of financial regulatory reforms, intended to prevent a recurrence of an event like the "Great Recession" of 2008–2009.⁵¹ Section 922⁵² of Dodd-Frank amended the FCPA by adding

44. 15 U.S.C. § 78ff.

45. 15 U.S.C. § 78ff(c)(1)(A).

46. 15 U.S.C. § 78ff(c)(2)(A).

47. *Id.*; *Resource Guide to the FCPA*, *supra* note 20, at 69.

48. *Resource Guide to the FCPA*, *supra* note 20, at 68.

49. *Id.* at 48.

50. *Id.* at 48–49.

51. 12 U.S.C. § 5301 ("An act to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.").

52. *See id.* §§ 748, 922 (Section 922 amends the Securities Exchange Act of 1934, applies specifically to corruption in the securities industry, and is most likely to be used in FCPA actions; Section 748, on the other hand, amends the Commodities Exchange Act to provide the same whistleblowing incentives as

monetary incentives to encourage individuals to report bribery of foreign officials.⁵³ If an individual⁵⁴ voluntarily provides the government with original information about a violation of the FCPA, and if that information leads to monetary sanctions of \$1 million or more,⁵⁵ then the individual shall be awarded ten to thirty percent of the sanctions.⁵⁶ The SEC has complete discretion to determine the amount awarded and will consider, among other things, the significance of the information, the degree of assistance it provided, and the government's interest in deterring future violations to make its determination.⁵⁷ However, no award will be given to individuals who knowingly and willfully provide false information.⁵⁸

Sensitive to fears of retaliation against those who report abuses by their companies, the legislation also strengthens the whistleblower protections in the Sarbanes-Oxley Act of 2002⁵⁹ and allows for anonymous reporting.⁶⁰ If an individual wishes, he can anonymously

Section 922).

53. *See generally id.* § 922.

54. *See id.* (noting that the legislation and ensuing regulations place some restrictions on which individual can receive an award for reporting FCPA violations, while the largest category of restrictions is on individuals who obtained the original information through an internal investigation they were legally obligated to conduct; the legislation also bars employees of certain governmental agencies and self-regulatory organizations from receiving awards under the new FCPA framework); 15 U.S.C. § 78u-6(c)(2) (2006) (defining the type of action the Commission will take, pursuant to securities laws, in response to monetary sanctions of \$1 million or more).

55. *See* 15 U.S.C. § 78u-6(b)(1) (stating that the statutory language includes judgments, settlements, and other forms of sanctions, thus, the government cannot avoid paying awards by settling cases prior to a judgment against the defendant).

56. *See id.* (providing that the size of the whistleblower-employer's award is determined based on the aggregate monetary sanctions imposed on the violative employer following a successful enforcement action).

57. *See id.* § 78u-6(c)(1)(B) (stipulating that the Commission is not to consider the balance of the payout fund).

58. *Id.* § 78u-6(i).

59. Sarbanes-Oxley Act, Pub. L. No. 107-204, 116 Stat. 745 (2002) (codified as amended in scattered sections of 15, 18, 28, 29 U.S.C.).

60. *See id.* § 78u-6(d)(1)-(2), (h) (providing that a whistleblower-employee, who seeks to remain anonymous, may instead be represented by counsel, so long as the employee submits probative information for his claim; Section 78u-(h) provides that the Commission may not disclose information that would reveal the identity of an anonymous whistleblower-employee, except in specific enumerated circumstances, in which disclosure is mandatory as part of an official public proceeding).

provide the Commission with original information through counsel, though counsel will be required to reveal the client's identity prior to the disbursement of any award.⁶¹ The legislation also includes strict confidentiality requirements and reinstatement, twice back-pay, as well as costs of litigation for any whistleblower who experiences retaliatory behavior.⁶²

In August 2011, final regulations issued by the SEC took effect and clarified some of the legislation's provisions.⁶³ Importantly, the regulations do not require whistleblower-employees to report information through their company's internal compliance system before disclosing it to the SEC.⁶⁴ The regulations do, however, incentivize internal reporting by providing the SEC with discretion to consider the use of such procedures in determining award amounts.⁶⁵ The business lobby continues to push for the use of internal compliance procedures to be required, and on May 11, 2011, Congressman Michael Grimm (R-NY) introduced legislation to codify that policy.⁶⁶

The regulations also define "original information" and

61. *Id.* § 78u-6(d)(1)–(2) (providing that if whistleblower-employees wish to remain anonymous, they must be represented by counsel).

62. *Id.* § 78u-6(h) (providing that a whistleblower-employee must bring an employer retaliation claim within six years after the violative act occurred, or within three years after the basis for his claim becomes known, or reasonably should have been known).

63. *See generally* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34300, 34300–84 (June 13, 2011) (to be codified at 17 C.F.R. pts. 240, 249) (establishing the compliance dates for the finalized rules applicable to the Dodd-Frank Act).

64. *See* John W. White et al., *SEC Adopts Dodd-Frank Whistleblower Rules*, CRAVATH, SWAINE & MOORE (May 26, 2011), available at http://www.cravath.com/files/Uploads/Documents/Publications/3288716_1.pdf (commenting that whistleblower-employees are now required to disclose the information to the SEC within a 120-day window of reporting the violation via internal mechanisms).

65. *Id.* at 2 (declaring that whistleblower-employees under the Dodd-Frank Act now may circumvent their company's internal compliance system by bringing their claims privately; moreover, the SEC may enforce the Act's anti-retaliation protections if the whistleblower-employee is discharged or discriminated against as the result of coming forward); *see also* 76 Fed. Reg. at 34322 (providing that where an FCPA action leads to multiple whistleblower claimants, the Commission will consider several factors listed in the final regulations to determine the appropriate allocation of the award).

66. *See* White, *supra* note 64, at 3.

“information that leads to successful enforcement.” Original information must be derived from the whistleblower’s independent knowledge and analysis and, intuitively, must not already be known by the SEC.⁶⁷ The definition generally excludes information held by officers, directors, auditors, and lawyers who obtained it while performing internal investigations, though these individuals can provide information from internal investigations in limited circumstances.⁶⁸ Information leading to a successful action must be specific, credible, and timely and must have some effect on the Commission’s investigative efforts.⁶⁹ That is, it either must cause the staff to start or reopen an FCPA action, pursue a new channel in an ongoing investigation, or significantly contribute to an ongoing investigation.⁷⁰ If an individual whistleblower provides information satisfying one of these criteria to his company and, after an internal investigation, the company ultimately discloses the information to the SEC, then the whistleblower will have preserved his “place in line” and will be eligible for compensation.⁷¹

The FCPA amendments have already had an effect on the fight against global corruption: the quantity and quality of tips has increased since Dodd-Frank’s enactment.⁷² Time will tell whether

67. See 76 Fed. Reg. at 34310–11 (providing that original information must not arise from allegations made during judicial or administrative hearings, government sources, or the media reports, unless the whistleblower-employee is the source of such allegations).

68. *Id.* at 34318–19 (including situations in which (1) the individual reasonably believes reporting is necessary to prevent substantial harm to the corporation or its investors, (2) the individual reasonably believes his company is attempting to impede the internal investigation, or (3) the individual has reported the information to his company and the company has failed to take action after 120 days).

69. See White, *supra* note 64 (commenting that original information must “sufficiently contribute” to the success of actions currently being enforced, or under investigation).

70. *Id.* (noting that the final SEC rules were designed to create added incentives for whistleblower-employees to take action via internal mechanisms).

71. *Id.* at 3 (commenting that the increasingly costly financial incentives under the Dodd-Frank Act should motivate companies to improve their own internal compliance mechanisms and investigation procedures).

72. *Id.* at 1 (observing that the number of whistleblower reports submitted to the SEC has substantially increased since the Dodd-Frank Act became law). *But see* Mike Koehler, *The Financial Reform Bill’s Whistleblower Provisions and the FCPA*, FCPA PROFESSOR (July 20, 2010), <http://www.fcprofessor.com/the-financial-reform-bills-whistleblower-provisions-and-the-fcpa> (predicting that the new whistleblower provisions would have a negligible impact on FCPA

FCPA prosecutions and settlements will improve correspondingly.

III. CONVINCING AND ALLOWING PRIVATE INDIVIDUALS TO FIGHT CORRUPTION

Plagued by financial scandals and the influence of money in politics, in 2010 the United States slipped out of Transparency International's list of the top twenty least corrupt countries. It fell to twenty-second place behind, among others, Canada (6), Barbados (17), and Chile (21).⁷³ That said, FCPA enforcement has recently become a high priority for the Administration, Department of Justice, and SEC.⁷⁴ In December 2008 and February 2009, the government secured penalties of \$800 million and \$579 million in two cases.⁷⁵ Then, in January 2010, the SEC formed an FCPA Specialty Unit, with instructions to start using cooperative agreements and agreements not to prosecute to encourage individuals to help the Commission gather information.⁷⁶ Around the same time, the Department of Justice increased its FCPA staff, and twenty-two FCPA-related arrests were made at a Las Vegas trade show.⁷⁷ Moreover, eight of the top ten settlements in FCPA history occurred in 2010, and eight companies paid a total of \$1.6 billion in penalties.⁷⁸ The government also increased the number of actions it

enforcement); Mike Koehler, *Friday Roundup*, FCPA PROFESSOR (Dec. 21, 2012), <http://www.fcprofessor.com/friday-roundup-63> (pointing out that “[o]f the 3,001 whistleblower tips received by the SEC in FY2012, 3.8% (115) related to the FCPA [and] in FY2011 (a partial reporting year) 3.9% of the 334 tips received by the SEC related to the FCPA”).

73. See Dave Graham, *U.S. Slips to Historic Low in Global Corruption Index*, REUTERS, Oct. 26, 2010, <http://www.reuters.com/article/2010/10/26/us-corruption-transparency-idUSTRE69P0X620101026>.

74. Fredric D. Firestone & Michael A. Ungar, *DOJ and SEC Will Significantly Increase FCPA Enforcement Efforts*, MCDERMOTT WILL & EMERY (Mar. 11, 2012), http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object_id/c2bea4e1-2573-4e83-b0bf-8086e0001d96.cfm.

75. *Id.*

76. *Id.*

77. *Id.* (reporting that the twenty-two arrests concerned executives and employees in the defense and law enforcement products industry).

78. See Andrew Longstreth, *Fight Brews over Anti-Bribery Laws as Fines Jump*, REUTERS, Sept. 15, 2011, <http://www.reuters.com/article/2011/09/15/us-fcpa-lobbying-idUSTRE78E7JK20110915> (noting that for the first twenty years of its history, the FCPA was rarely if ever enforced, but has seen a boom in recent years); see also *2010 Year-End FCPA Update*, GIBSON, DUNN & CRUTCHER 2–3

initiated: 2010 saw an eighty-five percent increase year-on-year in the number of actions.⁷⁹

A. THE COLLECTIVE ACTION PROBLEM AND THE FIGHT AGAINST CORRUPTION

Changes made to the FCPA highlight the federal government's increased focus on the fight against global corruption. By possibly solving the collective action problem, Dodd-Frank provides private individuals with a reason and a financial incentive to take action against global corruption. The amendments potentially allow a person to "do good and do well." In so doing, it also solves, or at least lessens, the information inequalities that hamper government efforts, thus expanding the fight against impunity and making it more efficient. Because Dodd-Frank helps solve the collective action problem, private individuals are able to get involved in the fight, meaning that global corruption may actually start to decrease.

In many ways, the government's anti-corruption efforts have been inhibited by opportunity costs and information inequalities. The Dodd-Frank amendments have the potential to mitigate both. Even with a high percentage of companies willing to cooperate with authorities, FCPA investigations are costly.⁸⁰ Investigations require a serious investment of U.S. taxpayer-sponsored treasure and man-hours, possibly years, before any benefit is reaped.⁸¹ More importantly, investigations are economically costly, as resources

(Jan. 3, 2011), <http://www.gibsondunn.com/publications/Documents/2010YearEndFCPAUpdate.pdf> [hereinafter *2010 FCPA Update*] (explaining the number of enforcement actions in 2010 reached a record high of seventy-four actions brought by the Department of Justice and the SEC, eclipsing the previous high of thirty-eight actions in 2007).

79. See *2010 FCPA Update*, supra note 78, at 3 (explaining that the dramatic increase in enforcement actions over the past decade may be attributed to increases in departmental resources allocated to FCPA enforcement at the DOJ and SEC, as well as the enactment of several key pieces of legislation).

80. See Thomas Fox, *Top Ten FCPA Investigations of 2010*, INFOSEC ISLAND (Jan. 7, 2011), <http://www.infosecisland.com/blogview/10663-Top-Ten-FCPA-Investigations-of-2010.html> (arguing that there are no statistics available on how much it costs the government to run an FCPA investigation, but there are good statistics suggesting that private corporations running internal investigations spend millions of dollars on them).

81. *Id.* (inferring that these two examples are on the higher end, but they demonstrate the financial demands of conducting FCPA investigations).

devoted to one investigation cannot be devoted to another. This opportunity cost is a major inhibition on effectively combating global corruption, especially in an era when government resources are stretched to the limit and potential violators know there is a lower risk of being caught.⁸²

The fight has also suffered from information inequalities that make investigations lengthier, more costly, and less likely to succeed. Corporate insiders and employees are the most likely to be aware of FCPA violations—whether through general corporate knowledge, personal knowledge, or internal compliance and reporting mechanisms—but are, for reasons discussed below, the least likely to share that information with the government. Thus, the SEC and DOJ are often forced to initiate costly investigations with incomplete information.⁸³ This undoubtedly leads to either longer, more costly investigations, unnecessary investigations, or investigations that are stopped prematurely due to lack of evidence.

The information inequality is exacerbated by the collective action problem, which impedes individuals from cooperating with the government to fight corruption. Consider an employee at a multinational corporation with original information about her employer's FCPA violations.⁸⁴ Such an employee would be unlikely to disclose her information to the federal government for fear of

82. See *FCPA and FCA Backlogs and the DOJ Elephant in the Room*, MCGRATH & GRACE, LTD., <http://mcgrathgrace.com/component/content/article/9-blog/84-fcpa-and-fca-backlogs-and-the-doj-elephant-in-the-room.html> (last visited Nov. 21, 2013) (observing that the DOJ's limited resources are being stretched thin by the increasingly high volume of FCPA and FCA actions, causing government fraud investigations to last up to two years).

83. See, e.g., Barbara Crutchfield George & Kathleen A. Lacey, *Investigation of Halliburton Co./TSKJ's Nigerian Business Practices: Model for Analysis of the Current Anti-Corruption Environment on Foreign Corrupt Practices Act Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 503, 504 (2006) (detailing the expansive scope of the investigation of a Halliburton subsidiary in Nigeria, which started as a French government-led probe into minor allegations of fraud and rapidly developed into a major SEC investigation).

84. See William McLucas et al., *Get Ahead of the Bus or Be Hit by the Bus: Practical Strategies for Mitigating the Risks of the Dodd-Frank Whistleblower Program*, 44 BLOOMBERG BNA SEC. REG. & L. REP. 1, 3 (noting that the cost calculation would be similar for individual, rather than corporate actors, though the potential costs would be more social and less economic—that is, individual actors would likely be less concerned with employment retaliation and potentially more concerned with social retaliation).

serious reprisals. Her employer could fire her, or, alternatively, could reassign her into oblivion and encourage her to quit. She could be blackballed from her chosen industry and could risk becoming a social pariah as a “snitch.”

Unlike these concentrated potential costs, the benefits of the employee’s information disclosure would be widely disbursed, and she would likely receive little, if any, of the benefit of her own actions. To the extent that less global corruption means lower costs of doing business, prices of goods would decrease, but those benefits would be distributed between consumers worldwide. Profits would increase, but those benefits would be distributed between investors worldwide. Thus, if the employee is neither an investor nor a consumer, she would receive essentially none of the benefits of her actions. For example, if an American employee’s contribution to the fight against global corruption were to lead to a more transparent contracting process for Russian infrastructure, she would likely receive no benefit. The concentrated costs and disbursed benefits of providing corruption tips create a strong disincentive for private individuals to cooperate freely with the government.⁸⁵ Even if potential whistleblowers would receive a general, societal benefit from decreased corruption, they would still likely be dissuaded from acting because of the possible preference to be free-riders and wait for someone else to take action.⁸⁶

But Dodd-Frank takes an unprecedented step to increase the power of the global fight against corruption by providing private actors with an incentive and a means to contribute. The fight against corruption has, until now, been carried out by states and intergovernmental organizations rather than by private individuals.⁸⁷ Non-governmental

85. *But see* Chinyere Ajanwachuku, Comment, *An In-House Counsel’s Decision to Whistleblow*, 25 GEO. J. LEGAL ETHICS 379, 399 (2012) (demonstrating that a whistleblower-employee will decide to report violations based on a variety of factors ranging from financial incentives to a perceived ethical obligation to clients).

86. *See* Mark Pieth, *Collective Action and Corruption* 14 (Basel Inst. on Governance, Working Paper, No. 13, 2013), available at http://www.collective-action.com/sites/default/files/120915_WP%2013_Collective%20Action%20and%20corruption_Pieth_final.pdf (arguing that the collective action problem may deter employees from reporting violations, even if it is foreseeable that law enforcement will eventually crack down on their companies, whether they take action or not).

87. White, *supra* note 64, at 1 (commenting on the increasing prevalence of

organizations have also contributed to the fight as watchdogs and informers, but they have little ability to directly deter corruption.⁸⁸ Dodd-Frank is, therefore, fairly unprecedented because it incentivizes private individuals to contribute to an area that has traditionally been state-controlled. The FCPA still contains no private cause of action, but the recent amendments nevertheless provide a substantial means for private involvement in and influence over state actions.⁸⁹

The amendments take this unprecedented step not by adding a new avenue for private participation—though presumably, private individuals could always have disclosed information to the government—but by adding an incentive that had been lacking. The “new FCPA” effectively counters the collective action problem by both reducing the concentrated costs of taking action and consolidating the expected benefits. Whereas previously, a whistleblower bore the serious financial risk of retaliation, now he bears only the social costs. Although the Dodd-Frank retaliation protections are not a guarantee against retaliation or of full compensation, the provision of reinstatement, twice back-pay, and litigation costs should decrease and distribute the risks of taking action.

In addition, the new FCPA significantly consolidates the benefits that private actors can expect to gain from their work. A whistleblower with valuable information can still expect to gain the general benefits of reduced global corruption that he always could, but additionally, he or she can expect to receive thousands or millions of dollars for his efforts. As described above, recent

individual whistleblowers in state and inter-governmental enforcement actions).

88. See Kathleen M. Hamann et. al., *Developments in U.S. and International Efforts to Prevent Corruption*, 40 INT’L LAW. 417, 428–30 (2006) (non-governmental organizations may design non-compliance policies, monitor fraud investigations, and oversee the implementation of national and international initiatives; however, they generally react responsively, rather than preemptively, to instances of corruption).

89. Pieth, *supra* note 86, at 14 (noting that the United States’ model of solving the collective action problem to greatly increase the resources available to fighting grand corruption has the potential to be expanded and implemented in other countries). The basic approach of seeking to decrease the free-rider problem by solving the collective action problem will provide a general strategy for other countries, which can tailor their specific approach to conditions on the ground.

settlements and penalties have ranged from the hundreds of millions to billions of dollars; a whistleblower receiving ten to thirty percent of such a sanction will have his risks and costs more than compensated. Dodd-Frank should, therefore, largely nullify the collective action problem and encourage individual actors to join the fight against global corruption.⁹⁰

B. PUBLIC CHOICE THEORY AND FCPA LOBBYING

The increase in FCPA enforcement has led to the formation of a powerful lobby against certain aspects of the Act. For example, looking forward, the U.S. Chamber of Commerce plans to reshape its agenda to make changing the FCPA one of its top priorities.⁹¹ Lobbying by business groups has intensified, as they claim that the Act is an economic drag, which hurts American competitiveness.⁹² Human rights and anti-corruption-related lobby groups have countered that fighting corruption actually decreases the costs of doing business.⁹³ In March 2012, perhaps in response to the intense lobbying effort of business groups, the DOJ compromised with business groups and agreed to issue more guidance on the law.⁹⁴

By possibly countering the collective action problem, Dodd-Frank may have also readjusted the balance of costs and benefits in the

90. The more pressing question now may be whether the amendments swing the pendulum of the collective action problem too far, encouraging individuals to report too many violations too often, thereby reducing the effectiveness of internal compliance procedures; if individual awards are not balanced, it could increase the incidence of false positives and drive up costs to consumers as companies attempt to create insurance policies against huge sanctions.

91. Longstreth, *supra* note 78 (demonstrating that increased usage of the FCPA in federal prosecutions has prompted legislators to reassess its viability in light of the current economic landscape).

92. *Id.* (explaining how business lobbyists argue that foreign companies do not encounter the same legal hurdles as other companies, which fall under the FCPA's purview).

93. *See id.* (observing that anti-corruption and human rights activists are anxious that the Chamber of Commerce's proposed amendments may lessen the bite of the FCPA).

94. *See* Basil Katz, *DOJ Official, US Chamber, to Discuss Enforcement of Bribery Law*, REUTERS, Mar. 16, 2012, <http://www.reuters.com/article/2012/03/16/fcpa-guidance-idUSL2E8EGEQ720120316> (remarking that both the Chamber of Commerce and several senators have argued for incorporating greater clarity and consistency into the FCPA to illustrate how the law will be enforced in practice).

lobbying process—as described in the public choice theory.⁹⁵ The costs of anti-corruption legislation are greatly concentrated on multinational corporations, while the benefits are widely disbursed among the consumer and investor class.⁹⁶ Accordingly, businesses have a strong incentive to lobby the government for a weaker FCPA or at least weaker enforcement of a strong FCPA, or more clear guidelines of a strong FCPA.⁹⁷ Individual actors have a weak incentive to take any action in favor of a strong FCPA because they are not likely to be adequately compensated for their work.

However, Dodd-Frank has changed the public choice theory balance by providing individuals with a strong monetary incentive to take action in favor of strong anti-corruption legislation. By concentrating and increasing the potential benefits of fighting corruption, Dodd-Frank may actually strengthen the anti-corruption lobby. In essence, Dodd-Frank has strengthened the fight against global corruption not only by encouraging individuals to take part in the fight but also by encouraging public interest groups to support a strong legal framework. Time will tell if corporate groups embrace this change and contribute greater resources and attention to compliance officers and their anti-corruption programs.

C. USING SEC DISCRETION TO MAINTAIN A BALANCE OF INTERESTS UNDER THE NEW FCPA

Individual actors' ability to affect the fight against corruption under the new FCPA is not unfettered. The largest limit on private action in FCPA cases is the SEC's complete discretion over prosecuting actions and determining award amounts.⁹⁸ That

95. See Zachary J. Gubler, *Public Choice Theory and the Private Securities Market*, 91 N.C. L. REV. 745, 779–80 (2013) (remarking that the Dodd-Frank Act and the Sarbanes-Oxley Act were both passed during politically dynamic, yet turbulent economic periods, contrary to traditional public choice theory, which states that laws and regulations are enacted as the result of the rational choices of actors in the financial marketplace).

96. See *id.* at 782 (noting that before the Sarbanes-Oxley Act was passed, the political power of corporate interest groups, like the Chamber of Commerce, began to steadily ebb, creating space for unions, consumers, and other public interest groups to assert themselves).

97. See *id.* at 792 (remarking that businesses may be more successful at lobbying for changes in legislation after public interest in promoting economic reform has declined).

98. See 12 U.S.C. § 922(a)(a)(5), (b)(1) (providing that the amount of award

discretion is essential to maintaining the effectiveness of the new framework.

If whistleblowers are widely seen as gaining windfall profits from the pain of corporate shareholders, their peers may begin to search for and report evidence of potential corruption, regardless of its frivolity. Such behavior wastes government resources and does little, if anything, to further the global fight against corruption; indeed, it could actually impair the fight. Accordingly, complete SEC discretion is required to ensure whistleblowing awards are meted out fairly and in the manner least likely to cause false positives.

SEC discretion over FCPA actions also allows the government to maintain control over its foreign policy objectives. FCPA actions have undoubtedly impacted foreign policy in the past, but there was little chance that the public could become involved in the action. The Dodd-Frank amendments increased the likelihood of public involvement and should thus increase the number of actions brought.⁹⁹ That increase could make the Act's effect on foreign policy more salient because suits against foreign companies or accusations of U.S. allies having corrupt government officials could disrupt American relations abroad.

The Alien Tort Statute ("ATS") creates a similar risk of disrupting international affairs, but the State Department has countered that risk by adopting a protocol of submitting letters to district courts involved in ATS cases and asking them to dismiss the actions if they are potentially harmful to foreign relations.¹⁰⁰ The authors are unaware of any State Department protocol requiring consultation with the

conferred will also be affected by the amount of sanctions obtained by regulatory government agencies through related enforcement actions).

99. See Mike Delikat, *Dodd-Frank's Whistleblower Bounty Provisions: The First Wave of Tips Filed with the SEC and What Public Companies Should Do Now*, 2012 A.B.A. SEC. LAB. & EMPL. L. EVENT REP. 2, available at http://www.americanbar.org/content/dam/aba/events/labor_law/2012/03/national_conference_on_equal_employment_opportunity_law/mw2012eeo_delikat.authcheckdam.pdf (pointing out that the number of whistleblower tips will likely increase as the Dodd-Frank Act's award program gains more attention).

100. Cf. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 695 (2004) (noting that "the potential implications for the foreign relations of the United States of recognizing private causes of action for violating international law should make courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs").

SEC or DOJ prior to the initiation of FCPA actions. However, we would not be surprised if such a process existed informally or if one develops following the impending surge in FCPA tips and actions. Nevertheless, Commission discretion allows the government to gain resources under the new FCPA without completely ceding power over foreign relations to private actors.

IV. APPLICATION TO MYANMAR AND CONCLUSION

The FCPA is part of the United States' securities regulation infrastructure, and is implemented by a large bureaucracy in the SEC and DOJ. Quite the opposite of the United States, Myanmar is in the early stages of creating a regulatory framework and civil service; it would, accordingly, be difficult and prohibitively costly for the country to create and effectively implement an anti-corruption framework on the scale of Dodd-Frank. This paper does not argue that Myanmar should implement the Dodd-Frank framework as constructed in the United States. Instead, it argues that the broad model presented by Dodd-Frank—one in which individual citizens are rewarded for whistleblower efforts (and, accordingly, one that solves the collective action problem)—provides a starting point for leaders in Myanmar seeking to reduce and eliminate corruption. Given the cost and time necessary to create a large-scale civil service, Myanmar's government may find it more efficient to run its anti-corruption efforts through its judiciary, whereas the Dodd-Frank framework is run largely through the executive branch. Some bureaucracy will likely be needed to protect against overreaching by private citizens and to represent the government's interest in anti-corruption investigations and lawsuits.

The judicial system in Myanmar is, like the rest of the government institutions, limited. The government may, nevertheless, find it easier to reform the judiciary—which will likely itself involve anti-corruption efforts—and create a small executive agency to lead its anti-corruption efforts under the Dodd-Frank model, as opposed to creating agencies on the scale of the SEC and the DOJ. Again, Myanmar should focus not on the specifics of the Dodd-Frank framework, but on the notion that involving and incentivizing private citizens, who are often the ones paying the costs of corruption, in the

fight against corruption can make that fight more effective, shorter and, ultimately, less costly to the state.

If the United States believes that its model for fighting corruption has the potential to be implemented around the world—and to change the way we fight corruption around the world (which would further the United States' own social and economic foreign policy goals)—it would be wise to work with Myanmar, a country that is rapidly changing, especially as it emerges from a cash-based economy to part of the global financial banking system. Indeed, the country may be the United States' best shot at testing its new regime in the developing world, and that shot comes at a time when the world is watching Myanmar's every move, as the recent decision to host the World Economic Forum there made clear.

Myanmar's fledgling democracy has recently shown its willingness to make drastic changes in a country mired in authoritarianism and corruption. The election of Aung San Suu Kyi trained the world's eyes on Myanmar, making it potentially this decade's success story. If the country continues to root out bureaucratic corruption and inefficiency, investors will likely flood it with money. A legal framework similar to the FCPA could create buy-in from citizens and incentivize their efforts to end corruption in a country where, to some, extreme poverty makes corruption seem, rightly or wrongly, like the least of the people's problems. And if an FCPA-type regime proves successful in Myanmar, at a time when so many people are watching the country, it could revolutionize the way we fight corruption in the developing world.