

## [Securities Regulation Daily Wrap Up, ENFORCEMENT—Petrobras to pay \\$1.8B to settle corruption-related charges, \(Sept. 27, 2018\)](#)

Securities Regulation Daily Wrap Up

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Brazil's national oil company agreed to pay \$933 million in disgorgement and an \$853 million penalty to settle SEC charges of misleading investors in a 2010 offering. Corrupt executives at the company accepted bribes and kickbacks from a cartel of contractors and suppliers that agreed to inflate the costs of projects. Federal prosecutors also [announced](#) the entry of a non-prosecution agreement in which the U.S. will credit the amount that Petrobras pays to the SEC and to the Brazilian government (*In the Matter of Petroleo Brasileiro S.A.—Petrobras*, [Release No. 33-10561](#), September 27, 2018).

The SEC's order instituting proceedings references five senior executives who rigged bidding for projects in favor of contractors and suppliers that agreed to inflate the costs of infrastructure projects by billions of dollars. These overcharges resulted in an inflation of property, plant and equipment in Petrobras's financial statements. The executives also accepted bribes from companies that sought to win contracts or obtain better terms for contracts, and the companies paid kickbacks that were channeled to the executives and to the Brazilian politicians who ensured their jobs. Each of the five executives has been convicted in Brazil of crimes related to the corruption.

Specifically, the executives implemented a cartel of participating companies and then facilitated those companies' selection in the bidding process by giving the cartel inside information; manipulating and influencing the bidding process; and voting to approve contracts that did not conform to Petrobras's procurement rules. As a result, Petrobras made material misstatements and omissions in SEC filings and in documents relating to a 2010 offering of equity securities that included \$10 billion in American Depositary Shares. "If an international company sells securities in the United States, it must provide truthful information about its business operations," SEC Enforcement Co-Director Steven Peikin observed in a [statement](#).

The company reported inflated assets and made other misstatements, such as disclosing that its executives were disinterested. Petrobras also failed to disclose the corrupt system of political patronage that underlay the Brazilian government's influence over the company and its selection of officers and directors. Filings failed to disclose specific risks and trends associated with the corruption and falsely stated that internal controls were effective.

The internal controls were not sufficient because, despite operating in a country with a history of corruption, Petrobras did not require employees to complete anti-corruption, anti-fraud, or compliance training. The company did not devise any policies addressing interactions with politicians and did not have a chief compliance officer until November 2014. The same executives had authority to award and approve contracts, and they could approve contract amendments without involving the legal department.

As part of the Department of Justice's announcement of the global resolution with Petrobras, Assistant Attorney General Brian A. Benczkowski said that the case "is just the most recent example of our ability to work with our foreign counterparts to investigate companies and other criminal actors whose conduct spans multiple international jurisdictions." In consideration of the non-prosecution agreement, Petrobras admitted that it failed to keep accurate and fair books and records and that certain executives failed to implement internal controls. The \$853.2 million criminal penalty reflects a 25-percent discount off the low end of the sentencing guidelines for the company's full cooperation and remediation. The Department of Justice and the SEC will each receive 10 percent of the criminal penalty; Brazil will receive the remaining 80 percent.

The release is [No. 33-10561](#).

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