

## Is Bribery Worth It? An Analysis of Companies Subject to FCPA Enforcement Actions

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### Introduction

Bribery and corruption are world-wide problem that erode trust in and stability of governments, businesses, and markets. The Foreign Corrupt Practices Act (FCPA) is the preeminent U.S. regulation for combatting the supply side of bribery (Venkatesan, 2015). This anti-bribery law makes it illegal for U.S. nationals, residents, and U.S. and foreign companies listed on U.S. stock exchanges to make payments to any foreign official for purposes of obtaining or retaining business. This law was enacted in 1977 shortly after the Security and Exchange Commission's (SEC's) bribery-amnesty program revealed a shocking magnitude of bribery with over 400 companies admitting to making questionable or illegal payments that together exceeded \$300 million to foreign officials (Weismann, 2008). Over 117 of these companies ranked in the top Fortune 500 companies (SEC, 1976).

The FCPA has two types of provisions: (1) anti-bribery provisions and (2) accounting provisions. The anti-bribery provisions prohibit offering to pay, paying, promising to pay, or authorizing the payment of money or anything of value to a foreign official in order to influence any act or decision or to secure any improper advantage in order to obtain or retain business (DOJ and SEC, 2012). The anti-bribery provisions apply broadly to three categories of persons and entities: (1) "issuers" (U.S. and foreign companies that list their securities on any U.S. securities exchange) and their affiliates, i.e., officers, directors, employees, agents, subsidiaries and shareholders; (2) "domestic concerns" or U.S. private companies and their affiliates; and (3) foreign persons and entities acting while in the territory of the U.S. The accounting provisions that operate in tandem with the anti-bribery provisions impose certain record keeping and internal control requirements on "issuers" and prohibit "issuers" as well as their affiliates from knowingly falsifying its books and records or circumventing or failing to implement a system of internal controls. Accordingly, the anti-bribery provisions cover much broader categories of persons and entities than the accounting provisions. FCPA violators could be subject to civil and/or criminal actions from the SEC and the Department of Justice (DOJ), the two federal agencies responsible for enforcing the FCPA. Both regulators consider the FCPA enforcement their top priority as evidenced by a significant surge in enforcement cases since 2007 (Yockey, 2013). This increasing emphasis on the FCPA enforcement is supported by Kanter (2017) who analyzed SEC enforcement cases from 2008 to 2014, and found that violations of the FCPA resulted in the highest penalties, averaging \$43.8 million per case, and in total constituting forty-seven percent of the penalties the SEC assessed in all fraud cases during the six-year period.

The illegal activities of bribery and corruption typically occur in developing economies because law and enforcement are relatively weak, and the local culture generally considers bribery as social/business norm (Transparency International, 2016). According to 2016 Report to the Nations on Occupational Fraud and Abuse, the leading region of corruption is Southern Asia where corruption accounts for 67.3% of all fraud schemes, followed by Middle East and North Africa (57%), Eastern Europe and Western/Central Asia (55.1%), Asia-Pacific (48.4%), Sub-Saharan Africa (48.4%), and Latin America and the Caribbean (45.5%). A rationale for multinational corporations to engage in bribery is usually to get things done and to effectively compete with local companies that regularly engage in bribery to secure businesses (Powpaka, 2002). This rationale is consistent with institutional theory which suggests that paying bribes is simply an entry cost of multinational corporations to join an established game and facilitate their survival in their environment (Wright et al., 2005). Multinational corporations also claim that, without bribery, their companies are at a significant competitive disadvantage that would undermine their commercial effectiveness in developing countries (Thomas, 2010). This claim implies that bribery, which is illegal, is economically necessary and justifiable for enhancing firms' financial performance. Although such claim fails to consider the adverse impact of bribery on the free market system and the society, and focuses strictly on corporate welfare,

there is no empirical evidence to either support or negate such claim. Without any validity test, this claim likely continues to provide a rationale for multinational corporations to justify their involvement in the illegal conduct of bribery.

This study empirically examines such claim by using two approaches to investigate whether bribery is worth it. The first one is a regulator approach that examines the relation between bribe amount, illicit profit and penalty. Illicit profit is the tangible payoff of bribery; therefore an examination of illicit profit and related penalty serves to verify whether bribery is worth it. The second one is a financial-performance approach that compares financial performance (accounting numbers and ratios) of FCPA violators to those of their matched peers during the violation period. Enhancing firms' financial performance is a motivation for bribery (De Jong et al., 2012). Thus, comparing financial performance of FCPA violators against that of their honest competitors verifies the validity of this motivation, which suggests that bribery is financially advantageous.

The study has two major contributions. First, it provides input to regulators regarding the potential deterrent effect of FCPA penalty. Second, it provides multinational corporations and their managers with a big-picture empirical evidence of whether bribery is worth it from both punitive and economic viewpoints. This could persuade multinational corporations' managers away from bribery. The results of this study should be very timely given the following two findings of Global Corruption Barometer (Transparency International, 2015/16). First, they find that bribery is very widespread, i.e., more than one in four people (twenty-seven percent) around the world report having paid a bribe in the last twelve months when interacting with key public institutions and services. Second, people around the world view corruption as a serious problem with an average score of 4.1 across 107 countries based on a scale of one to five where five means corruption is a very serious problem.

### **Regulator Approach**

The SEC and the DOJ share enforcement authority for the FCPA's anti-bribery and accounting provisions. They also work with many other federal agencies such as the FBI and the Federal Reserve Board of Governors, and foreign law enforcement partners to investigate and prosecute FCPA violations, reduce bribery via good governance programs, and promote a fair playing field for companies doing business abroad (DOJ and SEC, 2012). Potential FCPA violations typically come to the DOJ and the SEC attention via tips from informants or whistleblowers, information developed in other investigations, self-reports by companies, referrals from other agencies, public sources such as media reports and proactive investigative techniques. Although the FCPA violators could be subject to both civil and criminal liability, the DOJ and the SEC generally take only a civil action that involves a non-prosecution agreement or deferred prosecution agreement, and requires violators to disgorge/surrender illicit profit, pay penalty and interest on disgorged/surrendered profit, and adhere to remedial compliance program (Yockey, 2013)

There has been a significant surge in FCPA enforcements between 2001 and 2016 with the DOJ and the SEC's taking actions against 135 U.S. and foreign corporations, compared to only thirty-three modest-sanction enforcements against corporations during its first twenty-four years (Persons, 2018). Three main reasons explain this significant surge in FCPA enforcement activities. The first one is due to globalization. Regulators have placed more emphasis on the need for vigorous anti-corruption enforcement as more and more firms are searching for business opportunities abroad, especially in emerging economies where bribery and corruption are rampant. The second reason is the regulatory developments including the enactment of the Sarbanes-Oxley Act in 2002, and the passage of the Dodd-Frank Wall-Street Reform and Consumer Protection Act in 2010.<sup>1</sup> These new regulations have the whistleblower provisions that require reporting and certification obligations that may arise when a firm learns of potential FCPA compliance problems. The third one relates to the greater international cooperation with anti-corruption enforcement across jurisdictions as a result of the adoption of the United Nations Convention against Corruption and the Organization of Economic Cooperation and Development (OECD) Convention that has the same purpose and the same two provisions (anti-bribery and accounting) as the FCPA (OECD, 2014). Given these recent developments, it is likely that this FCPA enforcement trend will continue for the foreseeable future.

This study examines FCPA enforcement actions of the SEC and the DOJ to determine whether imposed penalty (excluding disgorged or surrendered illicit profit, and interest) is large enough to possibly deter bribery. Disgorged or surrendered profit, and interest are excluded from the measurement of penalty because this study wants to focus on only the punishment

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<sup>1</sup> The 2010 Dodd-Frank Act has been substantially rolled back by the Economic Growth, Regulatory Relief, and Consumer Protection Act signed into law by President Trump on May 24, 2018. This new bill provides relief to small and medium-size banks by requiring only large banks (with assets of more than \$250 billion) to comply with the Dodd-Frank Act (Ramirez, 2018).

part that the SEC and the DOJ can “discretionarily” determined. Unlike the penalty (fine) that is under control of the SEC and the DOJ, illicit profit occurred before a discovery of FCPA violation and interest on disgorged profit is legally required by default. Given that bribery is very widespread especially in emerging economies, the number of FCPA violators that were caught and penalized likely represents just the tip of an iceberg. This is because the DOJ and the SEC have limited resources to enforce FCPA, therefore they focus their efforts on and make an example out of violations that involved extensive bribery and larger illicit profit. As a result, the amount of penalty must be significantly high to have a deterrent effect. Consistent with Weismann (2009) who calls for stiffer enforcement penalties that inflict both economic and reputational costs, this study argues that, to effectively deter FCPA violation, the penalty cost of bribery should be not only positively correlated to illicit profit, but also significantly higher than illicit profit which represents benefit of bribery to violators. This argument leads to the first two hypotheses.

**H1:** Correlation between penalty and illicit profit is significantly positive.

**H2:** Penalty is significantly higher than illicit profit.

This study devises two ways to test H2. First, the excess of penalty over illicit profit is significantly higher than zero. Second, a ratio of penalty to illicit profit is significantly higher than one. Bribery is not worth it if these two hypotheses are confirmed. Hinchey (2011) argues that FCPA enforcement is ineffective because it appears random and disparate, and involves disproportionate fines. The findings of this study that is based upon more recent enforcement cases up through 2016 should serve to verify the result of Hinchey (2011) that relied on older 2007 and 2008 FCPA cases.

In addition, this study investigates the difference between self-report violators and non-self-report violators with respect to the excess of penalty over illicit profit and the ratio of penalty to illicit profit. Both DOJ and SEC place a great consideration on self-reporting in determining the appropriate resolution of FCPA violation (DOJ and SEC, 2012). A corporation’s self-reporting, cooperation and acceptance of responsibility may lead to fine reductions by decreasing the culpability score. Similarly, the U.S. Sentencing Guidelines take into consideration a defendant’s cooperation and voluntary disclosure of an offense prior to its discovery by allowing for a reduced sentence. In all, regulators tend to be more lenient on a firm that voluntarily reports its violation in a timely manner, promptly takes corrective actions, and fully cooperates with an investigation. This leads to the third hypothesis about self-reporting.

**H3:** Self-report violators are subject to lower penalties than non-self-report violators.

Similar to the first two hypotheses, disgorged profit and interest are excluded in testing this hypothesis because an examination of FCPA enforcement indicates that the SEC and the DOJ require violators to disgorge profit and pay related interest regardless of whether they self-report or not. So it is only the penalty (fine) that has a potential to differentiate self-report violators from non-self-report ones. A finding that a self-report violator is subject to a lower penalty could motivate more multinational companies to self-report FCPA violation. Penalty is measured not only by a dollar amount but also by the excess of penalty over illicit profit, a ratio of penalty to illicit profit, and a ratio of penalty to bribe amount. This third hypothesis also serves to verify the conclusion of Hinchey (2011) that self-reporting does not result in a tangible benefit.

### **Financial-Performance Approach**

Prior studies (Weismann, 2009; Darrough, 2010; Weismann et. al, 2014) have examined the effectiveness of the FCPA, and conclude that the FCPA has not had dramatic impact on deterring bribery. A presumption of these studies in their investigation of the FCPA effectiveness is that governments have the primary responsibility of curbing bribery. Instead of asking how effective the law enforcement is, this study takes an economic approach by questioning whether bribery enhances overall financial performance of FCPA violators relative to their matched competitors during the violation period. Because bribery allows firms to achieve business goals, bribery could promote growth and improve firms’ financial performance (Vial and Hanoteau, 2010). Paying bribe also can be considered as a type of investment in networks or social capital that enables the development of favorable relationships with public officials in order to increase legitimacy and decrease the risk of failure (Webb et al., 2009).

Only a handful of studies have recently tested the positive theorization of bribery as enhancing firm performance. All of these studies focus on firms in developing economies. Vial and Hanoteau (2010) find a positive relation between bribery and output as well as labor productivity of Indonesian manufacturing firms. Ayaydin and Hayaloglu (2014) find positive effect of bribes on sales growth of Turkish manufacturing firms. Most recently, Williams et al., (2016) find bribery enhances performance (growth rate of sales and productivity) of 106,805 enterprises across 132 developing countries. None of these

studies utilize developed-economy firms that pay bribes in developing economies. Additionally, none of them is able to use control-firm approach due to the prevalence of bribery among local firms in developing countries.

This study adds to the literature as it is the first one to provide evidence of the impact of bribery on financial performance of firms from developed countries, e.g., the U.S. and Western European countries. It also utilizes matched/control-firms approach which helps strengthen the validity of its findings. As we all know, institutional factors of developed economies greatly differ from those of developing ones. Among other things, legal framework is more developed, law enforcement is much stronger, and corporate governance is more effective in developed economies (Hoskisson et al., 2000). In addition, developed economies have more vigilant media and analysts, as well as more efficient and transparent capital markets. These more-advanced developments in virtually all business-environment aspects of developed economies can dampen the positive impact of bribery on financial performance of developed-country firms that pay bribe in developing countries. This leads to the following hypothesis.

**H4:** Financial performance of violators during FCPA violation is not significantly better than that of matched non-violators.

Financial performance during FCPA violation is measured by eight accounting variables. They are net sales, net income, operating cash flows, free cash flows (operating cash flow less capital expenditure and cash dividends), profit margin (net income divided by net sales), turnover (sales divided by average total assets), return on assets (net income divided by average total assets), and return on stockholders' equity (net income divided by average total stockholders' equity). There are two reasons for using these accounting variables to test H4. First, they are directly affected by bribery. For example, sales, net income, and operating cash flows would increase as a result of obtaining business through bribery. Second, some of these variables were used in prior studies (e.g., Williams et al., 2016; Vu et al., 2018) that examined bribery effect on firm performance. An annual average of each variable is computed over FCPA violation period for each violator and its matched competitor. T-test and Wilcoxon rank-sum test are used to test the difference in financial performance of violators and matched non-violators. Bribery is not worth it if the hypothesis is supported.

### **Data Collection**

This study examines the entire population of companies that: (1) are subject to FCPA enforcements from 1977 through 2016; and (2) have data available for the analyses of at least one of the two approaches. The financial-performance approach focuses on enforcements against publicly-listed companies because this approach requires financial-statement data from annual reports that are available to the public only if firms are listed on a securities exchange. The regulator approach utilizes both public and private companies as long as the amounts of illicit profit and penalty are disclosed in DOJ and SEC enforcement documents. Information about FCPA violation of public companies is from "Spotlight on FCPA" on the SEC web site. Information about private companies' violation comes from the DOJ's FCPA enforcement actions on the DOJ web site. There is a significant overlap between SEC and DOJ enforcement (i.e., many FCPA violators are subject to enforcement by both regulators).

To show the history of FCPA enforcement based on the information on the website of the SEC and the DOJ, Table 1 [see pg 59] presents the number of FCPA enforcement actions against corporations and individuals by year from 1977, the first year that FCPA became effective, through 2016. During the first twenty years (1977–1996) of FCPA, there were a total of only twenty-six enforcements against corporations (average of 1.3 action per year), and forty-five actions against individuals (average of about 2.25 actions per year). There were five years with no enforcement action against any corporation during the first twenty years of FCPA. The next ten years, 1997–2006, showed an improvement in enforcements as there were twenty-six cases against corporations (average of 2.6 actions per year), and fifty-three actions against individuals (average of 5.3 actions per year). A dramatic increase in enforcements against corporations started in 2007 with sixteen actions, peaked in 2010 with thirty-two actions, leveled off from 2011 to 2015 with an average of about twelve cases per year, and regained its vigor in 2016 with twenty-eight enforcement actions. So the SEC and the DOJ have greatly increased their fight against bribery since 2007 with a total of 166 enforcements against corporations and 155 actions against individuals during 2007 and 2016 (average of about 16.5 cases per year for corporations and 15.5 actions per year against individuals).

In all there were a total of 218 FCPA enforcements against corporations from 1977 to 2016. However, only 151 corporate violators have information about the amount of illicit profit and penalty for use in the regulator-approach analysis. Out of these 151 violators, ninety-nine firms or 65.56% self-reported bribery to the DOJ and the SEC whereas fifty-two firms or 34.44% did not self-report. These violators came from eighty-two industries based upon the four-digit Standard Industrial

Classification (SIC) code. Top two industries with the highest number of violators are 2834 Pharmaceutical Preparation (thirteen firms) and 1381 Drilling Oil and Gas Wells (seven firms). The majority, seventy-one percent, are U.S. firms. The other twenty-nine percent are foreign firms from Europe except three firms from South America (Brazil and Chile), two firms from Bermuda, two firms from Asia (Japan and Israel), and one firm from Canada. Top four countries of these European firms are the U.K. (four firms), France (four firms), Germany (four firms), and Netherlands (three firms).

There are a total of 329 named countries in which FCPA violations took place among these 151 firms. Except seven violations that took place in Western Europe and one violation involving bribery of UN officials, 321 or 97.57% took place in developing countries. The leading geographic region is Latin America and Caribbean (sixty-three violations or 19.63%), followed by South/Southeast Asia (fifty-seven violations or 17.76%), Middle East and North Africa (fifty-four violations or 16.82%), East Asia (forty-nine violations or 15.26%), Africa-other than the north (forty-seven violations or 14.64%), Eastern Europe and Russia (thirty-seven violations or 11.53%), and Western/Central Asia (fourteen violations or 4.36%). The two countries with the highest number of violations are China (forty-two violations) and Iraq (twenty violations most of which were related to UN's Oil for Food Program during 2001–2003). These findings are consistent with an earlier discussion that most bribes occur in developing countries.

For the financial-performance approach, only 134 firms have the required financial statement data for the analysis. A matched (control) firm for each violator is identified by the following criteria: (1) has not been the target of FCPA enforcement action by the SEC or the DOJ; (2) is in the same industry (based on the SIC code) as the matched violator; (3) has a similar size (net sales closest to the FCPA violator) for the year right before the first year of the violation; and (4) has financial statement data for the same data-collection period as the matched violator. This study also tries to identify a matched firm that comes from the same home country or geographical region as an FCPA violator. Annual reports, i.e., Form 10-K for U.S. firms and Form 20-F for foreign firms, in the SEC's online EDGAR database are used to collect financial-statement data of both violators and their matched peers during FCPA violation period.

## **Results**

Results of testing H1 and H2 of the regulator approach using the full sample are in Table 2A, which reports information about bribe, illicit profit, and penalty of 151 corporations that violated FCPA. Panel 1 of the table shows bribe amount that has a median of \$1.76 million and a much higher mean of \$29.42 million due to a very high maximum of \$1.4 billion bribery of Siemens AG that involves many countries around the world. The minimum bribe is zero for an enforcement against a firm (JP Morgan) that provides internships or jobs for children of foreign officials in order to influence the officials. The median illicit profit is \$5.36 million and a much higher mean of \$58.93 million due to an extremely high maximum of \$3.336 billion in illicit profit that a Brazilian violator, Odebrecht S.A., earned as a result of bribery. The minimum illicit profit is zero given that twenty-four violators did not earn any profit because they bribed foreign officials to undertake actions such as releasing tax refunds, reducing tax assessment, allowing substandard products to enter a country, waiving tariff, and in one unusual case getting paid for the amount that foreign government owed the company. Penalty amount ranges from zero for fifteen firms to \$2.6 billion that included sanctions of the SEC, the DOJ as well as Brazilian and Swiss authorities in the case of Odebrecht S.A. All fifteen firms, that were not subject to any penalty, promptly self-reported bribery to the SEC and the DOJ, and fully cooperated with the authorities throughout the investigation.

Table 2A-Panel 2 [see pg 60], which is for testing H1, reports significantly positive correlation among bribe, illicit profit and penalty. In particular, penalty and illicit profit have the highest correlation of 0.925 followed by a correlation of 0.840 between penalty and bribe, and a correlation of 0.729 between profit and bribe. These results confirm H1 that a correlation between penalty and illicit profit is significantly positive. This implies that regulators consider the amount of bribe and illicit profit as important determinants of penalty amount.

Panel 3 of Table 2A is for testing H2 which hypothesizes that penalty is significantly higher than illicit profit. Two variables, ExcessPenalty (penalty less illicit profit) and Penalty/Profit are used for testing H2. ExcessPenalty has a statistically significant mean of \$19.84 million, meaning that, on average, penalty exceeds illicit profit by about twenty million dollars. Penalty/Profit also has a statistically significant mean of 2.90, suggesting that on average penalty is close to three times as much as illicit profit. These results confirm H2 of the regulator approach and support the argument that bribery is not worth it. However, the results may be affected by outliers, i.e., the very high maximum of \$554 million of ExcessPenalty pertaining to Siemens AG, and the extra low minimum of \$-736 million of ExcessPenalty pertaining to Odebrecht S.A. To

address the potential influence of these two outliers, this study tests H1 and H2 again after excluding Siemens AG and Odebrecht S.A. from the sample.

The results without these outliers are in Table 2B [see pg 61] which clearly shows in Panel 1 a drastically lower maximum and a much lower mean of bribe amount, illicit profit and penalty. Consistent with Panel 2 of Table 2A (full sample), Panel 2 of Table 2B, which is for testing H1, reports a significantly positive correlation of 0.91 between penalty and illicit profit. Panel 3 of Table 2B, which tests H2, shows ExcessPenalty with a lower maximum of \$472.29 million without Siemens AG vs. \$554 million in the full sample, and a much lower minimum of \$-182.90 million without Odebrecht S.A. vs. \$-736 million in the full sample. This results in a higher ExcessPenalty mean of \$21.43 million which has a much stronger significance level (0.1%) than the mean of \$19.84 million in Table 2A with a significance level of only five percent. This ExcessPenalty result strongly supports H2. For Penalty/Profit, the results after excluding the two outliers remain virtually the same as those in the full sample. In all, both H1 and H2 are supported after excluding the outliers. The regulatory approach, therefore, strongly indicates that bribery is not worth it.

Another noteworthy results of Table 2B are the relatively small median of \$0.30 million of ExcessPenalty, and the median value of 1 for Penalty/Profit. These results seem to suggest that close to fifty percent of FCPA violators may not be sufficiently penalized because the amount of imposed penalty is less than the amount of illicit profit. This argument is also supported by the highly negative minimum and a negative value at twenty-five percentile of ExcessPenalty. The last variable, Penalty/Bribe, is not part of the hypothesis testing, and is presented here to show that penalty is quite higher than bribe amount with a highly significant mean of 5.75 and a median of 2.66. The result of Penalty/Bribe is more significant than that of Penalty/Profit because the amount of bribe is smaller than the amount of illicit profit as shown in Panel 1 of Table 2B.

Table 3 [see pg 62] presents results of testing H3 which hypothesizes that self-report violators are subject to lower penalties than non-self-report violators. Four variables are for testing H3. They are the penalty amount, the excess of penalty over illicit profit (ExcessPenalty), a ratio of penalty to illicit profit (Penalty/Profit), and a ratio of penalty to bribe amount (Penalty/Bribe). T-test and Wilcoxon rank-sum test of both full sample and sample without the outliers indicate that all four variables of self-report violators are significantly lower than those of non-self-report violators. A further examination of self-report violators reveals a consistent pattern that their top executives were not aware of FCPA violation that had been carried out by managers at subsidiaries in developing countries until just before the self-report. On the other hand, top executives of many non-self-report violators were aware of or even supported bribery. Prompt reporting, corrective actions and full cooperation with the regulators enable the self-report violators to qualify for more lenient sanctions as evidenced by their significantly lower penalties, significantly smaller ExcessPenalty (penalty less illicit profit), and significantly smaller ratios of penalty to illicit profit (Penalty/Profit) and penalty to bribe (Penalty/Bribe). These results strongly confirm H3 that self-report violators are subject to lower penalties than non-self-report violators. This finding clearly reflects an economic benefit of self-reporting and voluntary disclosure of FCPA violation, and negates the assertion of Hinchey (2011) and other critics who question the benefit of self-reporting.

Table 4 [see pg 63], which tests H4 based on the full sample, presents the eight measures of financial performance during bribery period of FCPA violators and their matched competitors. Although these violators earned substantially higher illicit profit than bribe amount as reported in Panel 1 of Tables 2A and 2B, their net income, net sales, operating cash flows, free cash flows and the four profitability ratios (MARGIN, TURNOVER, ROA, and ROE) during FCPA violation were not significantly higher than those of their matched peers. Indeed, free cash flows of violators are significantly lower than those of matched peers based on t-test. These results support H4 that financial performance of FCPA violators is not significantly better than that of matched non-violators during bribery period. So bribery does not enhance overall financial performance of violating firms relative to their competitors that did not engage in bribery. This strongly indicates that bribery is not worth it based on the financial-performance approach. This inference remains the same after excluding Siemens.

This study also conducts a diagnostic test for H4 by comparing the percentage change (improvement) in these performance measures (i.e., net sales, net income, operating cash flows, free cash flows, and the four profitability ratios) of FCPA violators to those of their matched competitors. The change is computed as the difference between the average value of these variables during FCPA violation and the average value of them during two years before the violation divided by the average value during two years before the violation. Results (not reported here) indicate that bribery does not significantly improve financial performance of violators relative to matched non-violators. These diagnostic-test results provide further evidence for the economic unworthiness of bribery.

## **Conclusions and Implications**

This study investigates whether the illegal conduct of bribery is worthwhile by utilizing two approaches: the regulator approach and the financial-performance approach. The regulator approach has three hypotheses about the relationship of bribe amount, illicit profit, and penalty. All three hypotheses are confirmed. That is: (1) penalty has a significantly positive correlation with illicit profit; (2) penalty significantly exceeds illicit profit as measured by penalty less illicit profit, and a ratio of penalty to illicit profit; and (3) self-report violators are subject to lower penalty than non-self-report violators. However, there is a caution for regulators regarding the second-hypothesis results that, in a number of cases, the penalty may not be high enough to deter FCPA violation. The study also finds that penalty is positively correlated to bribe and that a ratio of penalty to bribe is significantly higher than one. These findings suggest that monetary punishment is, on average, commensurate with the extent of bribery, i.e., the amount of related illicit profit and the bribe amount. Overall, the finding that penalty significantly exceeds illicit profit should serve as a warning against bribery for multinational corporations' managers in developing economies where bribery is widespread. The results about self-reporting clearly indicate a tangible benefit of timely and voluntary disclosure of bribery to the authorities.

The financial-performance approach finds that financial performance of violators during FCPA violation is not significantly better than that of matched non-violators. This finding which is observed across eight different performance measures serves as a caution to multinational corporations that bribery is economically unworthy as it does not enhance firms' performance compared to their competitors that do not engage in bribery. The finding also serves to dispel the concern that companies will be commercially disadvantaged if they refuse to bribe.

An additional area of investigation for future studies is to examine FCPA violators' stock market returns before versus after the enforcement disclosure, as well as market reaction to the enforcement. A significantly lower stock returns after the enforcement or a negative market reaction to the enforcement disclosure would provide further support for the economic unworthiness of bribery. Another area of investigation is to replicate the regulatory approach of this study using anti-bribery enforcement actions of authorities from other developed countries such as the U.K., France, or Germany. A study of anti-bribery enforcement in a developing economy such as China, which is the country with the highest number of FCPA violations among this study's sample firms, would also contribute to the literature.

In all, findings of both approaches in this study provide a strong support for the notion that the bribery, which is illegal, is not worth it punitively and economically. Multinational corporations should consider bribe as an additional expense that impedes business growth and innovation, and in some cases, may lead to a financial loss (bribe exceeding illicit profit). If caught, corporations would face not only substantial penalty but also a loss in reputation and brand image that can jeopardize future sales. Thus, regulators and corporations around the world must cooperate in the fight against bribery and corruption.

## References

- Association of Certified Fraud Examiners. (2016) *Report to the Nations on Occupational Fraud and Abuse*. [www.acfe.com/rtn2016.aspx](http://www.acfe.com/rtn2016.aspx), Accessed August 29, 2018.
- Ayaydin, H. and Hayaloglu, P. (2014). The effect of corruption on firm growth; Evidence from firms in Turkey. *Asian Economic and Financial Review*, 4 (5):607–624.
- Darrough, M.N. (2010). The FCPA and the OECD Convention: Some lessons from the U.S. experience. *Journal of Business Ethics* 93: 255–276.
- De Jong, G., Tu, P.A., and Van Ees, H. (2012). Which entrepreneurs bribe and what do they get from it? Exploratory evidence from Vietnam. *Entrepreneurship Theory and Practice*, 36 (2): 323–345.
- Department of Justice and Securities and Exchange Commission. (2012). *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>, Accessed September 7, 2018.
- Hinchey, B. (2011). Punishing the penitent: Disproportionate fines in recent FCPA enforcements and suggested improvements. *Public Contract Law Journal* 40 (2): 393–442.
- Hoskisson, R.E., Eden, L., Lau, C.M. and Wright, M. (2000). Strategy in emerging economies. *Academy of Management Journal*, 43 (3): 249–267.
- Kanter, H.A. (2017). Lessons to learn from SEC accounting and auditing enforcements. *Journal of Accountancy* (December), 26–30.
- Organization of Economic Cooperation and Development. (2014). *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing. <http://dx.doi.org/10.1787/9789264226616-en>, Accessed September 4, 2018.
- Persons, O. (2018). Corporate governance characteristics of FCPA violators. Working Paper, Rider University, Lawrenceville, New Jersey.
- Powpaka, S. (2002). Factors affecting managers' decision to bribe: An empirical investigation. *Journal of Business Ethics* 40 (3): 227–246.
- Ramirez, K. (2018). *President Trump signs Dodd-Frank rollback into law*. <https://www.housingwire.com/articles/43464-president-trump-signs-dodd-frank-rollback-into-law>, Accessed September 7, 2018.
- Securities and Exchange Commission. (1976). *A Report on Questionable and Illegal Corporate Payments and Practices*. Submitted to the Senate Committee on Banking, Housing and Urban Affairs, 94<sup>th</sup> Congress 2<sup>nd</sup> Session.
- Thomas, C. (2010). The Foreign Corrupt Practices Act: A decade of rapid expansion explained, defended and justified. *The Review of Litigation* 29 (2), 439–471.
- Transparency International. (2016). *Corruption Perception Index*. [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016), Accessed September 7, 2018.
- Transparency International. (2015/16). *Global Corruption Barometer*. [https://www.transparency.org/research/gcb/gcb\\_2015\\_16/0/](https://www.transparency.org/research/gcb/gcb_2015_16/0/), Accessed August 31, 2018.
- Venkatesan, R. (2015). Confronting Corruption. *McKinsey Quarterly*. [http://www.mckinsey.com/insights/corporate\\_social\\_responsibility/confronting\\_corruption](http://www.mckinsey.com/insights/corporate_social_responsibility/confronting_corruption), Accessed September 6, 2018.
- Vial, V. and Hanoteau, J. (2010). Corruption, manufacturing plant growth and the Asian paradox: Indonesian evidence. *World Development*, 38 (5): 693–705.
- Vu, H.V., Tran, T.Q., Nguyen, T.V. and Lim, S. (2018). Corruption, type of corruption and firm financial performance: New evidence from a transitional economy. *Journal of Business Ethics*, 148 (4): 847–858.



- Webb, J.W., Tihanyi, L., Ireland, R.D. and Sirmon, D.G. (2009). You say illegal, I say legitimate: Entrepreneurship in the informal economy. *Strategic Entrepreneurship Journal*, 34 (3): 492–510.
- Weismann, M.F. (2009). The Foreign Corrupt Practices Act: The failure of the self-regulatory model of corporate governance in the global business environment. *Journal of Business Ethics*, 88 (4): 615–661.
- Weismann, M.F., Buscaglia, C.A. and Peterson, J. (2014). The Foreign Corrupt Practices Act: Why it fails to deter bribery as a global market entry strategy. *Journal of Business Ethics*, 123 (4): 591–619.
- William, C.C., Martinez-Perez, A., Kadir, A. (2016). Does bribery have a negative impact on firm performance? A firm-level analysis across 132 developing countries. *International Journal of Entrepreneurship Behavior & Research; Bradford*, 22 (3): 398–415.
- Wright, M., Filatotchev, I., Hoskisson, R.E. and Peng, M.W. (2005). Strategy research in emerging economies: Challenging the conventional wisdom. *Journal of Management Studies*, 42 (1): 1–33.
- Yockey, J.W. (2013). Choosing governance in the FCPA reform debate. *Journal of Corporation Law*, 38 (2): 325–380.

**Table 1: FCPA Enforcement Actions of SEC and DOJ**

<u>Enforcement</u> <u>Years</u>	<u>CORPORATIONS</u>			<u>INDIVIDUALS</u>		
	<u>SEC</u>	<u>DOJ</u>	<u>Total</u>	<u>SEC</u>	<u>DOJ</u>	<u>Total</u>
1977	0	0	0	0	0	0
1978	2	0	2	8	0	8
1979	1	1	2	0	0	0
1980	1	0	1	0	0	0
1981	1	0	1	2	0	2
1982	0	4	4	0	8	8
1983	0	2	2	0	3	3
1984	0	0	0	0	0	0
1985	0	2	2	0	1	1
1986	1	0	1	1	0	1
1987	0	0	0	0	0	0
1988	0	0	0	0	1	1
1989	0	3	3	0	10	6
1990	0	2	2	0	8	8
1991	0	1	1	0	0	0
1992	0	1	1	0	0	0
1993	0	1	1	0	1	1
1994	0	2	2	0	6	6
1995	0	0	0	0	0	0
1996	1	0	1	0	0	0
1997	1	0	1	6	0	6
1998	0	2	2	0	4	4
1999	0	3	3	0	2	2
2000	1	0	1	0	0	0
2001	4	1	4	5	9	9
2002	2	1	2	3	3	6
2003	0	1	1	1	5	6
2004	3	2	3	0	4	4
2005	4	4	5	1	4	4
2006	4	2	4	8	6	12
2007	14	12	16	7	7	13
2008	8	14	15	2	12	13
2009	12	7	14	3	43	46
2010	20	26	32	7	9	15
2011	14	10	15	12	8	10
2012	8	10	12	1	2	2
2013	8	9	11	0	14	14
2014	7	10	13	2	11	13
2015	8	2	10	2	7	9
2016	<u>24</u>	<u>14</u>	<u>28</u>	<u>5</u>	<u>15</u>	<u>20</u>
TOTAL	<u>149</u>	<u>149</u>	<u>218</u>	<u>76</u>	<u>203</u>	<u>253</u>

**Table 2A: Full Sample**  
 Bribe, Illicit Profit, and Penalty of FCPA Violating Firms  
 (in millions except Penalty/Profit and Penalty/Bribe)

**Panel 1**

Variables	Minimum	25%	Median	Mean	75%	Maximum
Bribe	0	0.41	1.76	29.42	8.60	1,400.00
Profit	0	0.59	5.36	58.93	16.80	3,336.00
Penalty	0	0.44	4.00	75.37	20	2,600.00

**Panel 2: Regulatory Approach—Correlation of Bribe, Profit, and Penalty—H1 Test**

	Bribe	Profit	Penalty
Bribe	1.000		
Profit	0.7291 (.0000)	1.000	
Penalty	0.8398 (.0000)	0.9254 (.0000)	1.000

**Panel 3: Regulatory Approach—Whether Penalty Exceeds Illicit Profit—H2 Test**

Variables	Minimum	25%	Median	Mean	75%	Maximum
ExcessPenalty	-736	-2.04	0.30	19.84 <sup>##</sup>	8.71	554.00
Penalty/Profit	0	0.29	1.00	2.90 <sup>**</sup>	2.05	123.85
Penalty/Bribe	0	0.85	2.66	5.70 <sup>****</sup>	6.58	173.27

ExcessPenalty = Penalty – Illicit Profit

Penalty/Profit = Penalty divided by illicit profit

Penalty/Bribe = Penalty divided by bribe

<sup>##</sup> Significantly higher than zero at 5% level (one-sample t-test)

<sup>\*\*</sup>, <sup>\*\*\*\*</sup> Significantly higher than one at 5% and 0.1% level, respectively (one-sample t-test)

**Table 2B: Without Outliers**  
 Bribe, Illicit Profit, and Penalty of FCPA Violating Firms  
 (in millions except Penalty/Profit and Penalty/Bribe)

**Panel 1**

Variables	Minimum	25%	Median	Mean	75%	Maximum
Bribe	0	0.41	1.70	14.21	8.00	250.00
Profit	0	0.59	5.31	28.09	15.77	330.00
Penalty	0	0.44	4.00	47.84	18.20	795.33

**Panel 2: Regulatory Approach—Correlation of Bribe, Profit, and Penalty—H1 Test**

	Bribe	Profit	Penalty
Bribe	1.000		
Profit	0.7411 (.0000)	1.000	
Penalty	0.7712 (.0000)	0.9103 (.0000)	1.000

**Panel 3: Regulatory Approach—Whether Penalty Exceeds Illicit Profit—H2 Test**

Variables	Minimum	25%	Median	Mean	75%	Maximum
ExcessPenalty	-182.9	-1.87	0.30	21.43####	8.71	472.29
Penalty/Profit	0	0.29	1.00	2.93**	2.05	123.85
Penalty/Bribe	0	0.72	2.66	5.75*****	6.95	173.27

ExcessPenalty = Penalty – Illicit Profit

Penalty/Profit = Penalty divided by illicit profit

Penalty/Bribe = Penalty divided by bribe

#### Significantly higher than zero at 0.1% level (one-sample t-test)

\*, \*\*\*\*\* Significantly higher than one at 5% and 0.01% level, respectively (one-sample t-test)

**Table 3**  
 Bribe, Illicit Profit, and Penalty of FCPA Violating Firms  
 Self-Report vs. NO Self-Report—**H3 test**  
 (in millions except Penalty/Profit and Penalty/Bribe)

Variables	Minimum	Mean	Median	Maximum	T-Test	Wilcoxon
<b><u>Full Sample</u></b>						
<u>Penalty</u>						
Self-report	0.000	14.475	2.000	402.00		
NO self-report	0.000	191.316	18.600	2,600.00	-2.833***	-5.059*****
<u>ExcessPenalty</u>						
Self-report	-50.00	3.686	0.033	225.00		
NO self-report	-736.00	49.572	2.269	554.00	-1.745**	-2.031**
<u>Penalty/Profit</u>						
Self-report	0.000	1.302	0.935	9.001		
NO self-report	0.000	5.536	1.194	123.851	-1.446*	-1.976**
<u>Penalty/Bribe</u>						
Self-report	0.000	3.949	2.208	40.000		
NO self-report	0.000	8.984	3.492	173.273	-1.410*	-2.634***
<b><u>Without Outliers</u></b>						
<u>Penalty</u>						
Self-report	0.000	14.475	2.000	402.00		
NO self-report	0.000	113.889	17.650	795.33	-3.405*****	-4.795*****
<u>ExcessPenalty</u>						
Self-report	-50.00	3.686	0.033	225.00		
NO self-report	-182.90	55.429	2.269	472.29	-2.715***	-2.088**
<u>Penalty/Profit</u>						
Self-report	0.000	1.302	0.935	9.001		
NO self-report	0.000	5.740	1.194	123.851	-1.450*	-1.954**
<u>Penalty/Bribe</u>						
Self-report	0.000	3.949	2.208	40.000		
NO self-report	0.000	9.271	4.087	173.273	-1.433*	-2.717***

\*, \*\*, \*\*\*, \*\*\*\*, \*\*\*\*\* Statistically significant at  $p < 0.10$ ,  $p < 0.05$ ,  $p < 0.01$ ,  $p < 0.001$  and  $p < 0.0001$ , respectively.

**Table 4**  
**Financial Performance of FCPA Violators vs Matched Firms During FCPA Violation**  
(in millions except MARGIN, ROA, and ROE that are in %)—**H4 Test**

Variables	Minimum	Mean	Median	Maximum	T-Test	Wilcoxon
<b>Net Sales</b>						
FCPA	30.50	18,353.76	3,928.92	285,196.0		
Matched	45.64	16,633.85	4,000.75	325,103.5	0.391	0.561
<b>Net Income</b>						
FCPA	-8,224.00	1,315.38	209.60	20,646.0		
Matched	-1,810.65	1,440.24	209.84	30,730.0	-0.288	-0.224
<b>Operating CF</b>						
FCPA	-43,731.00	1,914.76	438.70	28,325.0		
Matched	-21.61	2,427.23	402.18	44,344.5	-0.703	-0.435
<b>Free CF</b>						
FCPA	-49,212.00	43.21	68.73	7,059.0		
Matched	-5,788.50	895.58	68.44	24,137.5	-1.682**	0.965
<b>MARGIN%</b>						
FCPA	-229.95%	4.91%	5.94%	43.12%		
Matched	-161.25	6.51	6.74	54.32	-0.641	-0.311
<b>TURNOVER</b>						
FCPA	4.38%	93.22%	89.61%	266.92%		
Matched	4.44	100.80	92.85	322.64	-1.091	-0.579
<b>ROA%</b>						
FCPA	-36.96%	5.61%	4.92%	26.86%		
Matched	-32.91	6.50	5.73	29.73	-0.843	-0.866
<b>ROE%</b>						
FCPA	-4,520.71%	-24.65%	12.20%	112.62%		
Matched	-157.08	174.17	12.89	199.13	-1.208	-0.929

\*\* Statistically significant at  $p < 0.05$ .

Each variable is an annual average over FCPA violation. Free CF = Operating cash flow less capital expenditure and cash dividends. MARGIN (Profit Margin) = Net income divided by net sales. Turnover = Sales divided by average total assets. ROA (Return on assets) = Net income divided by average total assets. ROE (Return on stockholders' equity) = Net income divided by average total stockholders' equity.