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LA W RADIO

Actualidad

## Firma legal estadounidense advirtió a Junta de **Ecopetrol** sobre potencial investigación de la SEC

El apartamento que Ricardo Roa compró a precio de ganga a empresa de Serafino Iacono interesaría a autoridades de Estados Unidos.



### Últimas Noticias

**Bogotá lamentó la muerte del senador Miguel Uribe Turbay**

**CPJ denunció asesinato de seis**

05:00h

12:00h

• Directo

15



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WRadio FM

La W con Julio Sánchez Cristo con Julio Sánchez Cristo



### Programación ^ Señales v

12:00

Mujeres W con Rosario Gómez

13:00

Peláez y De Francisco en La W con Hernán Peláez; Martín De Francisco

15:00

Salud y algo más con Carolina Novoa Arias

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Roa, incluyendo la compra de un lujoso apartamento, a precio de ganga, a una empresa de Serafino Iacono, empresario con múltiples intereses en el sector de los hidrocarburos.

El documento escrito en inglés dice que si bien es poco posible que la SEC investigue directamente a

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**Ecopetrol** por esta transacción, lo que es muy probable es que quiera saber si el negocio de Roa se adelantó sin vulnerar medidas contables establecidos por la FCPA, la ley de prácticas corruptas en el extranjero.

Así mismo, advierte que la SEC puede preguntar cuáles son las medidas que tomó la junta para ejercer su deber de control sobre el administrador, es decir, **sobre Ricardo Roa, para determinar si el apartamento, vendido a tan buen precio, constituye un beneficio indebido recibido por el presidente de Ecopetrol** y si hubo falsificaciones contables en el negocio.

- > **Ecopetrol** confía en la viabilidad de los proyectos eólicos y solares que adquirirá de Statkraft
- > Alberto José Vergara responde a las acusaciones en su contra al interior de **Ecopetrol**

Textualmente dice: “La junta no ha realizado una evaluación independiente sobre si lacono solicitó o recibió cualquier beneficio indebido o ventaja comercial de **Ecopetrol** en relación con la venta del apartamento de Roa (...) al considerar los riesgos asociados con la posibilidad de que la SEC pueda llevar a cabo una investigación sobre posibles violaciones de controles contables”.

También señala el documento que **la Junta ofreció a la SEC hacer una investigación independiente** y debe cumplir con ese compromiso.

En el análisis del caso, **los abogados estadounidenses indican que lacono es un empresario venezolano con múltiples intereses** en el sector del petróleo y el gas, **que ha sido el CEO de NG Energy y relata: “El 20 de abril de 2023, cuatro días antes de que Roa asumiera la presidencia de Ecopetrol, Hocol S.A., una subsidiaria de Ecopetrol firmó un acuerdo de confidencialidad con MKMS Enerji, una subsidiaria de NG Energy (empresa vinculada con Serafino lacono), y acordaron –entre otras cosas– compartir información para evaluar la potencial compra del Bloque Sinú 9”**

Roa, en calidad de presidente de **Ecopetrol**, llegó a la junta directiva de Hocol S.A., **la empresa que analizaba la compra del Bloque gasífero con Serafino lacono.**

Curiosamente, hace unos días **la petrolera francesa Maurel & Prom anunció que había cerrado la compra** del 61% del contrato del Bloque Sinu 9 por 225 millones de dólares. **El otro 31 por ciento será de MKMS Enerji Anonim Sirketi, una empresa turca controlada por Serafino lacono, el antiguo dueño del apartamento de Ricardo Roa.**

Esa transacción **tiene que ser autorizada por la Agencia Nacional de Hidrocarburos, ANH, por tratarse de un bien de la nación.**

El memorando **de la firma de abogados estadounidense de 6 páginas, que pueden ver a continuación, fue enviado a estos miembros de la junta directiva de Ecopetrol:**

1. **Guillermo García Realpe**, presidente de la Junta
2. **Lilia Tatiana Roa Avendaño**, viceministra de ambiente y miembro no independiente de la Junta
3. **Luis Alberto Zuleta Jaramillo**, quien fue miembro de la Junta hasta noviembre y presidente del Comité de Auditoría y Riesgos que tenía que ver directamente con el control de este caso.
4. **Ángela María Robledo**, exrepresentante a la Cámara y compañera de fórmula del presidente Gustavo Petro en 2018
5. **Mónica de Greiff**, miembro independiente de la Junta y quien también es miembro de juntas directivas de empresas relacionadas con Serafino lacono
6. **Gonzalo Hernández**, entonces miembro de la junta y viceministro de Hacienda de Ricardo Bonilla. Hernández también terminó en la junta de una empresa **minera** del grupo de Serafino lacono

7. **Edwin Palma**, quien fue miembro de la Junta de **Ecopetrol** hasta su nombramiento como ministro de Minas. Por cierto, hoy al mediodía se vence un plazo fijado por una tutela, para que ese Ministerio y la Agencia Nacional de Hidrocarburos entreguen una información sobre el Bloque Sinú 9, en el que como lo hemos dicho, tiene intereses Serafino Iacono.
8. **Juan José Echavarría**, miembro independiente quien renunció a la Junta directiva luego de que **Ecopetrol** renunciara al proyecto Crownwork, que él consideraba vital para el futuro de la compañía.
9. **Álvaro Torres Macías**, llamado miembro independiente de la Junta, pero que en la práctica es una ficha del presidente de la compañía, Ricardo Roa.

El memorando de Covington & Burling LLP concluye de la siguiente manera: “En resumen, es nuestra opinión que es poco probable que la SEC lleve a cabo una investigación formal de **Ecopetrol** por posibles violaciones de las disposiciones contra el soborno de la FCPA. Sin embargo, basándonos en las acciones pasadas de aplicación de la SEC, creemos que la SEC podría decidir investigar a **Ecopetrol** para determinar si violó las disposiciones contables de la FCPA debido a controles inadecuados o documentación falsa sobre conflictos de intereses y el proceso de adjudicación de contratos. Dado ese riesgo, la Junta debería cumplir con su compromiso con la SEC de llevar a cabo una investigación independiente sobre las acusaciones sobre la compra del apartamento de Roa y la relación comercial de **Ecopetrol** con Iacono y sus empresas”.

**Ecopetrol** ha mantenido este documento en reserva total y **no ha avanzado investigación independiente alguna por este caso**, que además no es el único que implica a Ricardo Roa.

## COVINGTON & BURLING LLP

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Attorney Work Product

October 17, 2024

### Memorandum

To: Board of Directors of Ecopetrol S.A.

From: Covington & Burling LLP

Re: **Assessment Regarding Potential SEC Interest in Conflict of Interest Allegations**

The Board of Directors of Ecopetrol S.A. has asked Covington to assess the U.S. Securities and Exchange Commission's ("SEC") potential interest in the allegations in Colombia against Ricardo Roa Barragán, the current president of Ecopetrol S.A. ("Ecopetrol"). The proceedings involve a purported conflict of interest arising from Roa's December 2022 purchase of an apartment from a company allegedly associated with businessman Serafino Iacono.

We will evaluate the likelihood of the SEC investigating whether the purchase was unlawful under the Foreign Corrupt Practices Act's ("FCPA") anti-bribery and accounting provisions. We will also analyze potential avenues of investigation that the SEC may pursue. As with our prior memorandum, our advice is based solely on U.S. law and does not analyze or assess exposure under Colombian law.

#### I. Brief Response

Based on the facts and allegations known to Covington, it is our view that the SEC is unlikely to pursue a formal investigation of Ecopetrol for any potential violations of the FCPA's *anti-bribery provisions* relating to Roa's purchase of the apartment at issue. However, we do believe that the SEC may be interested in investigating Roa's purchase of the apartment pursuant to the FCPA's *accounting provisions*, as described below.

In addition to prohibiting bribery of foreign officials, the FCPA also requires issuers to keep accurate books and records, and devise and maintain a system of internal accounting controls sufficient to assure management's control, authority, and responsibility over the firm's assets. The SEC usually investigates potential violations of the books and records provision and potential violations of the internal controls provision in tandem, particularly where all the elements of a violation of the anti-bribery provisions are not met. In its enforcement actions,

the SEC has taken a broad view of what constitutes internal accounting controls and is likely to view internal accounting controls as including an issuer's controls over the conflict of interest review process, the contract award process, and compliance policies and procedures. Similarly, the SEC has considered books and records violations to broadly include the creation of false documentation or misrepresentation of a company's transactions or assets.

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To date, the Board has not yet undertaken an independent assessment as to whether Iacono sought or received any improper benefit or business advantage from Ecopetrol in connection with the sale of the apartment to Roa. Therefore, we believe that the SEC may be interested in investigating whether Roa's purchase of the apartment presented a conflict of interest, whether Ecopetrol's compliance policies and controls were effective in detecting and managing said conflict, and whether Ecopetrol's records and documentation of the same are accurate.

In considering the risks associated with the possibility that the SEC may pursue an investigation of potential accounting controls violations, the Board should consider the expectations that the SEC now has following the self-report. Because the Board already self-reported the allegations to the SEC and informed the SEC that it would oversee an independent investigation, the SEC likely expects the Board to follow through on this commitment.

## II. Analysis of Potential Applicability of the FCPA to Allegations at Issue

### A. Overview of Relevant Facts

On December 7, 2022 – more than four months before assuming the role of president of Ecopetrol – Roa purchased an apartment at a price that was later alleged by the media to have been discounted from its face value.<sup>1</sup> According to reviews conducted by Colombian media outlets, a public deed showed that Roa purchased the apartment for COP 1,800,000,000 (~US \$430,000), while an apartment less than half the size in the same building was sold a year earlier for COP 1,200,000,000 (~US \$285,000).<sup>2</sup>

According to press reports, the apartment had been owned by Princeton International Holdings LTD., a company based in the British Virgin Islands and whose Colombian subsidiary, Princeton International Holding Ltda., is affiliated with Iacono, one of its authorized representatives. Iacono is a Venezuelan entrepreneur with interests in various companies and sectors, including in the oil-and-gas sector.<sup>3</sup> Among other roles in these various companies, Iacono was the CEO of NG Energy International Corp. ("NG Energy") from 2019 to February 2024.<sup>4</sup> In September

<sup>1</sup> [Ecopetrol: el apartamento que compró Ricardo Roa antes de llegar a la entidad \(eltiempo.com\)](#), El Tiempo (December 16, 2023).

<sup>2</sup> D. Coronell, [Una gamba: el apartamento que Ricardo Roa, presidente de Ecopetrol, le compró a petrolero \(wradio.com.co\)](#), W Radio (December 18, 2023); [Compra de apartamento antes de llegar a Ecopetrol enreda a Ricardo Roa en posible conflicto de interés \(elcolombiano.com\)](#), El Colombiano (December 16, 2023).

<sup>3</sup> Iacono's wife, María Paola Mejía Suárez, and Laureano Jan Siegmund Vallenilla are also authorized representatives of Princeton International Holdings Ltda. The sale of the apartment was allegedly negotiated only by Siegmund.

<sup>4</sup> [Ecopetrol: el apartamento que compró Ricardo Roa antes de llegar a la entidad \(eltiempo.com\)](#), El Tiempo (December 16, 2023); NG Energy Announces Financing Agreement with Macquarie Group of up to US\$100 Million including US\$50 Million in Committed Funding (February 8, 2024).

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2022, NG Energy announced a new gas discovery in the Sinú-9 block in Córdoba, Colombia, as part of a partnership in which it was the majority owner.<sup>5</sup>

In January 2023, approximately two months after Roa purchased the apartment, Ecopetrol's former president announced his resignation.<sup>6</sup> The Board of Ecopetrol appointed Roa as president of Ecopetrol on April 11, 2023, and he assumed the role on April 24, 2023.

On April 20, 2023, four days before Roa assumed the role of president, Hocol S.A., a subsidiary of Ecopetrol, signed a confidentiality agreement with MKMS Enerji, a subsidiary of NG Energy, among other entities, in which the parties agreed to share information to evaluate a potential purchase of the Sinú-9 block.

In his role as president of Ecopetrol, Roa became a member of the board of several Ecopetrol subsidiaries. He was nominated to the board of Hocol S.A. on May 19, 2023, and he assumed the role as a board member on September 5, 2023.



In December 2023, a full year after Roa had purchased the apartment, Colombian press began reporting that a potential conflict of interest may have existed as to the purchase of the apartment and the signing of the confidentiality agreement between subsidiaries of Ecopetrol and NG Energy.

## B. Potential Implications Under the FCPA

The SEC is responsible for civil enforcement of the federal securities laws, which apply to foreign private issuers such as Ecopetrol. The SEC's FCPA Unit is responsible for investigating and bringing civil enforcement actions in connection with violations of the anti-bribery and accounting provisions of the FCPA. As discussed below, while we view it as unlikely that the SEC will show an interest in pursuing an investigation of Ecopetrol for violations of the anti-bribery provisions, it is possible that the SEC will show an interest in pursuing an investigation of Ecopetrol for violations of the accounting provisions. A violation of the FCPA's accounting provisions does not require a predicate violation of the FCPA's anti-bribery provisions.

### 1. Anti-Bribery Provisions

The FCPA's anti-bribery provisions prohibit, among other things, offering or providing the payment of money or anything of value to a foreign official for the corrupt intent of obtaining an unfair business advantage. This applies to issuers and their officers, directors, employees, agents, or stockholders acting on the issuer's behalf.

<sup>5</sup> [NG Energy Announces Reserves and Resources Results on the Magico-1x Well in Sinu-9 Block](#) (September 2, 2022).

<sup>6</sup> We understand that the purchase of the apartment was completed by the end of December 2022. Our analysis as to the facts, the sequence of events, and the potential FCPA implications may require revision if the facts suggest that the purchase was not completed (*e.g.*, the title for the apartment was not transferred) before Roa assumed the role of president of Ecopetrol.

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The allegations in the press do not claim that any Ecopetrol officer, director, employee, or agent offered or gave anything of value to a foreign official to obtain or retain business or gain an unfair advantage for the benefit of Ecopetrol. Furthermore, both the purchase of the apartment and the signing of the NDA occurred before Roa was named president of Ecopetrol. In other words, both events occurred before Roa could be considered a foreign official under the FCPA.<sup>7 8</sup>

Accordingly, we believe the SEC is unlikely to pursue an investigation against Ecopetrol for violations of the anti-bribery provisions.<sup>9</sup>

### 2. Accounting Provisions

In contrast, it is possible that the SEC may be interested in investigating Ecopetrol's books and records and internal accounting controls. The FCPA's accounting provisions require in part that issuers devise and maintain a system of internal accounting controls sufficient to, among other things, assure management's control, authority, and responsibility over the firm's assets. They also require that issuers make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect an issuer's transactions and dispositions of an issuer's assets.

The FCPA does not specify a particular set of controls that companies are required to implement, which allows companies flexibility to develop and maintain a system of controls that is appropriate to their particular needs and circumstances. According to guidance published by the U.S. Department of Justice ("DOJ") and the SEC, internal accounting controls include various components, such as: a control environment that covers the tone set by the organization regarding integrity and ethics, risk assessments, control activities that cover policies and procedures designed to ensure that management directives are carried out (*e.g.*, approvals, authorizations, reconciliations, and segregation of duties), information and communication, and

<sup>7</sup> This analysis under the FCPA is based on the facts known to date and would need to be revised if, for example, facts showed that Roa was acting as an agent of Ecopetrol before he assumed the role of president or if any other employees of Ecopetrol were involved in the purchase of the apartment.

<sup>8</sup> The new Foreign Extortion Prevention Act ("FEPA"), enacted in December 2023 and enforced by the U.S. Department of Justice ("DOJ"), criminalizes the demand side of foreign bribery. FEPA makes it a crime for any foreign official to "to corruptly demand, seek, receive, accept, or agree to receive or accept" anything of value from any company that is listed on a U.S. stock exchange, from any American or any American company, or while that official is in the United States, in return for performing or omitting any official act or conferring an improper business advantage. FEPA defines "foreign official" broadly, to include current or former senior executives of a foreign government-owned commercial enterprise and their family members as well as any person acting in an official or unofficial capacity for or on behalf of a government, department, agency, or instrumentality. Given that Ecopetrol is majority owned by the Colombian government, employees of Ecopetrol, including the president of the Company, would be considered "foreign officials" under FEPA. The statute, however, may not apply in this particular instance because the known conduct at issue pre-dates the enactment of FEPA.

<sup>9</sup> This analysis does not assess whether there are any possible violations of the FCPA by Iacono or his companies.

monitoring.<sup>10</sup> In practice, the SEC has equated internal accounting controls with compliance controls.<sup>11 12</sup>

The SEC may be interested in whether Roa exerted any influence over Hocol personnel involved in the negotiation of the NDA and the possible acquisition of the Sinú-9 block or conferred any improper advantage following his purchase of the allegedly discounted apartment linked to Iacono. Although we understand that Ecopetrol's compliance team has undertaken a review of these issues, to date, the Board has not undertaken an independent investigation of these issues. The SEC, having already been alerted to the conflict of interest allegations, may be interested in understanding whether Ecopetrol's conflict of interest processes and procedures as part of its contract award process were reasonably effective with regard to Hocol's relationship with NG Energy. Along the same lines, the SEC may also be interested in exploring Ecopetrol's due diligence processes, contract award processes, compliance policies related to the NG Energy relationship, and any documentation or record keeping of the same.

Our assessment of this possibility is based in part on the SEC's precedent of aggressively pursuing investigations focused on allegations of inadequate accounting controls. The SEC has investigated, and brought enforcement actions against a number of issuers, including two state-owned companies in Latin America for violations of the accounting provisions of the FCPA.<sup>13</sup>

<sup>10</sup> Crim. Div. of the U.S. Dep't of Just. & Enft Div. of the U.S. Sec. Exch. Comm'n, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, 2nd ed., p. 40 (July 2020).

<sup>11</sup> See, e.g., *Sec. Exch. Comm'n v. Teva Pharm. Indus. Ltd.*, No. 16-cv-25298 (S.D.FI Dec. 22, 2016).

<sup>12</sup> A federal court, in addressing a case involving cybersecurity controls, recently pushed back against the SEC's broad interpretation of internal accounting controls, finding that the requirement that a public issuer "devise and maintain a system of internal accounting controls" requires that the issuer "accurately report, record, and reconcile financial transactions and events" (emphasis in original). *Sec. Exch. Comm'n v. SolarWinds Corp.*, No. 1:23-cv-09518-PAE (S.D.N.Y. July 18, 2024). However, notwithstanding the court's decision in the *SolarWinds* case, controls over conflict of interest assessments and related contract awards processes are likely to be considered by the SEC to be accounting controls because they involve the financial reporting process.

<sup>13</sup> In 2018, U.S. authorities resolved investigations into Brazilian state-owned foreign issuers Eletrobras and Petrobras. With regards to Eletrobras, the SEC entered a cease-and-desist order, finding that former officers at an Eletrobras majority-owned subsidiary engaged in an illicit bid-rigging and bribery scheme and Eletrobras's compliance policies and internal accounting controls were insufficient or ineffective. The SEC found that Eletrobras had failed to devise and maintain a sufficient system of internal accounting controls and had compliance policies and procedures that were not specifically tailored to the inherent risks associated with the company's operations. Separately, the SEC charged Petrobras with misleading U.S. investors by filing false financial statements that concealed a massive bribery and bid-rigging scheme at the company. At the same time, DOJ entered into a non-prosecution agreement with the company in which Petrobras admitted failures to keep accurate books and records and to implement sufficient internal accounting controls. The identified failures in Petrobras's internal accounting controls included that Petrobras failed to implement appropriate due diligence procedures for the retention of third-party vendors, failed to implement sufficient oversight to prevent the revision of estimates at the conclusion of (continued...)



Due to the risk that the SEC may take a similarly aggressive position in this matter, the Board should take the necessary steps so that it is in a position to provide answers and responses as to the SEC, if the SEC were to show an interest in investigating potential violations of the FCPA.

When faced with allegations involving a possible conflict of interest on the part of its president, a Board overseeing the business of an issuer would be expected to investigate these allegations as part of its oversight function and in order to be consistent with the company's compliance policies and procedures involving reports of possible misconduct. Failure to do so could be considered an example of an ineffective or inadequate compliance program, and thus also an example of inadequate internal accounting controls. Importantly, the Board already self-reported the allegations to the SEC and informed the SEC that the Board would oversee an independent investigation of the allegations. The SEC expects companies that self-report and commit to undertake an investigation to follow through on these commitments. If the SEC were to follow up with the Board and no further investigation had been done, we expect that the SEC would have a negative reaction and it could be detrimental to the Company in any resolution of the matter.

### III. Conclusion

In sum, it is our view that the SEC is unlikely to pursue a formal investigation of Ecopetrol for potential violations of the FCPA's anti-bribery provisions. However, based on past SEC

enforcement actions, we believe that the SEC might decide to investigate Ecopetrol to determine whether it violated the FCPA's accounting provisions due to inadequate controls or false documentation around conflicts of interest and the contract awarding process. Given that risk, the Board should follow through on its commitment to the SEC to conduct an independent investigation into the allegations regarding Roa's apartment purchase and Ecopetrol's business relationship with Iacano and his companies.



the bid phase to favor certain bidders, and manipulated bid evaluation criteria to favor bribe-paying companies.

# Ecopetrol

# Investigación

Artículo anterior



Se apaga la vida de un joven que encarnaba los anhelos por una nueva Colombia: Consejo de Estado

Omar Pérez 2025/08/11

Artículo siguiente



“Pensar distinto no puede ser una condena a muerte”: Juan Manuel Galán sobre Miguel Uribe Turbay

Dívar Ortiz 2025/08/11



4.9M



1.6M



856K



777,3K



1,02M



401K



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