

DOJ Is Businesses' 'Partner,' Not 'Adversary,' Official Says

By Jody Godoy

Law360 (September 27, 2018, 7:31 PM EDT) -- U.S. Department of Justice official Matthew Miner told an audience of defense lawyers in Manhattan on Thursday that the government wants to work with businesses, not against them, in policing corporate crime, saying that they should view the DOJ as “partners, not adversaries.”

Miner, who oversees parts of the DOJ, including its Criminal Division, urged lawyers and compliance consultants to “come forward and say something” when they discover wrongdoing, according to his prepared remarks at a private conference organized by Global Investigations Review. The speech recapped enforcement actions in the past year and what Miner called “numerous changes” in the DOJ's approach to white collar crime.

“As I have said before and firmly believe, when business and industry work with the department, rather than against it, our public institutions and our country are stronger for it,” Miner said.

Martha B. Stolley, a white collar defense attorney with Morgan Lewis & Bockius LLP, said Miner seemed to strike a different tone compared with past DOJ speeches on self-disclosure.

“It seems more carrot and less stick than prior remarks, which veered towards 'self-report or else,’” Stolley said. “I think that reflects a continued refinement of the corporate enforcement policy.”

The policy Stolley referred to tells companies that may have violated the Foreign Corrupt Practices Act that they can expect the DOJ to pass on bringing otherwise viable charges where certain conditions are met. If a company self-discloses the conduct to the DOJ, cooperates in the DOJ's investigation, cleans up its act through compliance measures and coughs up the tainted profits, it can assume the DOJ will not charge it — unless there are aggravating factors.

At the outset, there was uncertainty among defense counsel over what the list of “aggravating factors” meant.

In his speech on Thursday, Miner pointed out that two companies the DOJ recently declined to charge had gotten that treatment even with the “aggravating factor” of senior executives being involved in the alleged bribery. Those companies were the Insurance Corporation of Barbados and British earthquake technology maker Guralp Systems.

“Companies making the decision of whether to voluntarily disclose should consider these cases and

recognize the significant benefits they can achieve through good corporate behavior under the policy,” Miner said.

Both Guralp and ICBL helped the DOJ bring charges against individuals. In Guralp's case, it was Korean government earthquake researcher Heon Cheol-Chi, who is appealing his conviction of one count of transacting in bribe-tainted funds. U.K. prosecutors have also charged Guralp's founder Cansun Guralp and former managing director Andrew Bell with conspiracy to make corrupt payments.

ICBL's former chief executive officer has been charged in Brooklyn with bribing former Barbados minister Donville Inniss in 2015 and 2016. The DOJ has not publicly named the CEO. ICBL's last CEO Ingrid Innes left the company at the beginning of 2017.

Miner said on Thursday that the corporate enforcement policy and the help it brings is an “important tool” for the DOJ in pursuing such cases against individuals.

“Voluntary disclosures and full cooperation allow prosecutors to gather evidence in a more timely and efficient manner, and to take investigative steps they might not otherwise have been able to take,” Miner said.

Miner also mentioned in his speech the DOJ's settlement with Petrobras that was announced earlier in the day, in which the DOJ and U.S. Securities and Exchange Commission will each receive 10 percent of a \$853.2 million payment, the rest of which will go to fund education and transparency programs in Brazil.

“These are not isolated events,” Miner said of the collaboration on the probe. “We continue to see a significant rise in global enforcement and cooperation with foreign authorities.”

--Editing by Alanna Weissman.