
foreign corrupt practices act lawflash

November 26, 2012

Lanny Breuer Touts Robust, Transparent FCPA Enforcement

Assistant Attorney General Breuer highlights transparency, global trends, and the benefits of robust compliance programs at the American Conference Institute's 28th National Conference on the Foreign Corrupt Practices Act.

On November 16, Assistant Attorney General Lanny A. Breuer addressed the American Conference Institute's 28th National Conference on the Foreign Corrupt Practices Act (FCPA).¹ Breuer made clear that vigorous enforcement of the FCPA will continue but emphasized the benefits to companies that utilize robust compliance efforts.

Assistant Attorney General Breuer noted that the last few years have seen robust FCPA enforcement, which has become an integral part of the work of the Department of Justice (DOJ) and has produced a dramatic change in the way the corporate world thinks about the FCPA. He noted that the DOJ's FCPA Unit had entered into more than 40 corporate resolutions since 2009, resulting in more than \$2 billion in fines and convictions against 36 individuals. The number of prosecutors devoted to working on FCPA cases has also nearly doubled since 2009.

The Assistant Attorney General then highlighted the DOJ commitment to transparency in FCPA enforcement by citing both the prosecution of Morgan Stanley's Garth Peterson and the DOJ's and the Securities and Exchange Commission's (SEC's) recent publication of "A Resource Guide to the U.S. Foreign Corrupt Practices Act" (Guidance).² Mr. Peterson, a former managing director of Morgan Stanley, conspired to circumvent Morgan Stanley's internal FCPA controls in order to transfer a multimillion-dollar ownership interest in a Shanghai building to himself and a Chinese public official with whom he had a personal friendship. Morgan Stanley voluntarily disclosed Peterson's conduct and fully cooperated with the DOJ's investigation. Although Peterson pleaded guilty to conspiring to evade Morgan Stanley's internal FCPA controls and is currently serving time in federal prison, the DOJ took the unusual step of publicizing the fact that it was declining to bring a case against Morgan Stanley. Again emphasizing the DOJ's commitment to transparency, the Assistant Attorney General went on to describe the Guidance as "the most comprehensive effort ever undertaken by either the [DOJ] or the SEC to explain [their] approach to enforcing a particular statute." The DOJ and SEC strive for transparency, Breuer pointed out, because they recognize that "[t]he vast majority of companies doing business internationally want to get it right."

Breuer also discussed the proliferation of antibribery legislation throughout the world and discussed anticorruption enforcement in historical terms. Citing the Arab Spring, the ongoing fight to establish rule-of-law programs, and the DOJ's new Kleptocracy Asset Recovery Initiative, the Assistant Attorney General described the FCPA as "our way of ensuring not only that the [DOJ] is on the right side of history, but also that it has a hand in advancing that history." Under the Kleptocracy Asset Recovery Initiative, the DOJ seizes and forfeits the assets of corrupt leaders around the world in the event that the DOJ is unable to pursue the party in the United States because of jurisdictional issues.

Later in the day, at the Federalist Society for Law and Public Policy Studies' 2012 National Lawyers Convention in Washington, D.C., the Assistant Attorney General discussed the FCPA and related topics with a group of former

1. View the text of the speech at <http://www.justice.gov/criminal/pr/speeches/2012/crm-speech-1211161.html>.

2. For more information on the Guidance, read our November 16, 2012, LawFlash, "Long-Awaited FCPA Guidance Offers Clarity But Few Revelations," available at http://www.morganlewis.com/pubs/FCPA_LF_Long-AwaitedFCPAGuidance_16nov12.

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high-ranking DOJ attorneys, including former Attorney General Michael Mukasey; Morgan Lewis partner George Terwilliger III, a former deputy attorney general; and Mark Mendelsohn, the former deputy chief of the Fraud Section of the Criminal Division of the DOJ. While the panelists applauded the issuance of the Guidance, all cited the need for further consideration of FCPA enforcement reforms, discussing, among others, specific proposals that have been the subject of congressional testimony by Mukasey and Terwilliger.

Companies that seek the complementary objectives of a level international competitive playing field and utilization of prudent and efficient compliance risk-management measures can find comfort in the enforcement authorities' stated intentions to maintain vigorous enforcement as a means to assure even competition but to also recognize and reward robust compliance. Nonetheless, uncertainty as to enforcement actions in a given circumstance will continue to demand corporate attention in the evaluation and pursuit of international business opportunities.

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