

White Collar Defense and Investigations

The Winds of Change They Aren't a Blowin': DOJ Affirms Commitment to Maintain White-Collar and FCPA Enforcement and Emphasizes the Importance of Corporate Compliance

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Two recent speeches have provided the first detailed glimpse of how the Justice Department says it will approach white-collar crime under Attorney General Jeff Sessions' management, dispelling the notion that this administration would usher in a sea-change in enforcement priorities. In a speech last week, Attorney General Sessions committed to continued enforcement of white-collar crime, emphasizing that laws against fraud and corruption protect law-abiding companies from unfair competition by those willing to skirt the law. Earlier this month, another senior Justice Department official provided a more detailed but similar overview of enforcement priorities. These speeches, though reflecting some modest changes in tone, explicitly recognized that corporate compliance is an important bulwark against criminal behavior and did not signal any major change in focus by the feds.

DOJ Speeches “Dispel that Myth” of Reduced White-Collar Enforcement

This year's change in presidential administration created uncertainty about the course of white-collar criminal enforcement. President Donald J. Trump had previously called the Foreign Corrupt Practices Act (FCPA) a “horrible law,” and more generally had promised a much more business-friendly regulatory environment, creating speculation that the Department of Justice may pare back its white-collar enforcement efforts. Attorney General Sessions' first weeks in office reinforced this speculation. He spent significant time emphasizing efforts to curb violent crime, but had not focused on white-collar enforcement. Meanwhile, the Department of Justice has not resolved an FCPA enforcement action since the inauguration.

However, Acting Principal Deputy Assistant Attorney General Trevor McFadden directly addressed the speculation about reduced enforcement, speaking with an intent “to dispel that myth” that the Justice Department “no longer is interested in prosecuting white collar crime.” And last week Attorney General Sessions, addressing the Ethics and Compliance Initiative Annual Conference, emphasized that “the Department of Justice remains committed to enforcing all laws,” including “corporate misconduct, fraud, foreign corruption and other types of white-collar crime.” He stressed that such laws “ensure that honest businesses aren't placed at a disadvantage.” Both men noted that the prior administration's policies of focusing on the prosecution of individual perpetrators of white-collar crime and rewarding corporate self-disclosure and remediation of wrongdoing as well as cooperation with the Department's investigation would continue.

Sessions Emphasizes Continued DOJ Commitment to FCPA Enforcement

Both speeches also used FCPA enforcement in particular as an example of continued white-collar emphasis. Attorney General Sessions said that his Justice Department will “strongly enforce the FCPA,” defending the law as central to securing the principle that businesses “succeed because they provide superior products and services” and not because of bribes. McFadden meanwhile ticked off the more-than-one-billion dollars in corporate settlements obtained through the Justice Department's FCPA enforcement last year to highlight that enforcement is “as alive as ever.” He noted that last year's FCPA pilot program, which was intended to induce disclosure and cooperation by rewarding companies that

self-report FCPA violations, was under review but still in force and continued to be the policy of the Department of Justice until otherwise announced. In short, McFadden said the Sessions Department of Justice would “vigorously enforce the FCPA” like its predecessors.

DOJ Now Describes Itself as in “Partnership” with Corporate Compliance Efforts to Stop Crime

While these statements signaled a continuation of prior enforcement practice, both speeches also highlighted the role of corporate compliance in significant ways. Attorney General Sessions said that his Justice Department would take into account whether companies have “good compliance programs” and emphasized the importance of “people and companies choosing of their own accord to obey the law.” McFadden expanded on this concept, explaining that the Justice Department understands that “by working with companies transparently and in partnership” it can improve compliance with the law; companies, and not the government, “are in the best position” to prevent criminal activity.

Bottom Line: Assume Administration Will Not Change Enforcement Landscape; Emphasize Compliance

Ultimately, it will be the prosecutions that the Justice Department brings, and chooses not to bring, that will define its white-collar enforcement priorities. But for now, these two speeches make clear that the public position of the Department of Justice is that it will not significantly change course in white-collar criminal enforcement and will continue to aggressively pursue fraud and foreign corruption cases. It is prudent take them at their word. The emphasis on the importance of effective compliance programs, both in generally reducing crime and in particular as a factor in taking enforcement action, is encouraging, but also stresses the importance of attention to compliance.



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