Debevoise & Plimpton

FCPA Update
March 2019
Volume 10
Number 8

FCPA Update

A Global Anti-Corruption Newsletter

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Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

The first quarter of 2019 saw two FCPA corporate enforcement actions. The first involved Cognizant Technology Solutions Corporation ("Cognizant"), regarding allegations of improper payments in India. The second involved Mobile TeleSystems PJSC ("MTS"), relating to allegations of improper payments in Uzbekistan.

Both enforcement actions are significant at least as much for their related actions against individuals as for the corporate actions themselves. In the case of Cognizant, senior former executives were indicted. Although such involvement typically would be an aggravating factor, the corporation received relatively lenient treatment from DOJ in the form of a declination with disgorgement. Meanwhile, the MTS enforcement action is notable less so for its facts, which are similar to those in prior Uzbek telecom cases, but because it was accompanied by the indictment of the "foreign official" behind all three of the Uzbek telecom cases, Gulnara Karimova.

Continued on page 2

Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

Continued from page 1

Cognizant and its Executives

On February 15, 2019, the SEC and DOJ announced the first FCPA corporate enforcement resolution of 2019 against Cognizant. These actions are notable for the alleged involvement of U.S.-based senior management and the declination with disgorgement granted to the company in spite of that fact. That outcome is likely yet another signal of DOJ's effort to demonstrate the tangible rewards for self-reporting and cooperation and the government's aggressive pursuit of individuals involved in corporate misconduct. The Cognizant enforcement actions also highlight two minor, but potentially telling, disagreements between the SEC and DOJ.

In relation to a cease-and-desist order ("Cognizant Order"), Cognizant, a New Jersey-based global provider of information technology and business process services, settled with the SEC allegations of anti-bribery, books and records, and internal controls violations.[1] In parallel, Cognizant received a declination with disgorgement letter from DOJ ("Cognizant Declination").[2] In settling with the SEC, Cognizant agreed to disgorge approximately $16.4 million and pay a civil penalty of $6 million and pre-judgment interest of just under $2.8 million, totaling approximately $25 million.[3] It further agreed to pay just under $19.4 million in disgorgement to DOJ,[4] against which its disgorgement to the SEC was credited, meaning the total penalty paid by Cognizant was $28 million.

On the same day, DOJ announced indictments[5] and the SEC announced a civil action[6] against Gordon J. Coburn and Steven E. Schwartz, respectively Cognizant's former President and former Executive Vice President and Chief Legal and Corporate Affairs Officer,[7] charging them with conspiracy to violate the anti-bribery, books and records, and internal controls provisions of the FCPA and substantive violations of the same.

Continued on page 3

1. SEC Press Release No. 2019-12, *SEC Charges Cognizant and Two Former Executives With FCPA Violations* (Feb. 15, 2019), https://www.sec.gov/news/press-release/2019-12.
2. Letter from the U.S. Dep't of Justice, Criminal Division, Fraud Section to Karl H. Buch et al. Re: *Congnizant Techology Solutions Corporation* (Feb 13, 2019), https://www.justice.gov/criminal-fraud/file/1132666/download [hereinafter "Cognizant Declination"].
3. Order, *In re Cognizant Tech. Solutions Corp.,* Securities Exchange Act Rel. No. 85149 (Feb. 15, 2019), https://www.sec.gov/litigation/admin/2019/34-85149.pdf [hereinafter "Cognizant Order"].
4. Cognizant Declination at 2.
5. Indictment, *United States v. Coburn,* No. 19-CR-120-KM5 (D.N.J. Feb. 14, 2019), https://www.justice.gov/criminal-fraud/fcpa/cases/gordon-coburn [hereinafter "Coburn and Schwartz Indictment"].
6. Complaint, *Securities & Exchange Comm'n v. Coburn,* No. 19-cv-05820 (Feb. 15, 2019), ECF. No 1, https://www.sec.gov/litigation/complaints/2019/comp-pr2019-12.pdf [hereinafter "Coburn and Schwartz Complaint"].
7. Coburn and Schwartz Indictment ¶¶ 1(c)-(d); Coburn and Schwartz Complaint ¶¶ 14–15.

Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

Continued from page 2

Given the outstanding charges against individuals, it is important to note that, as with many corporate FCPA settlements, none of the SEC's or DOJ's "findings" have been proven. Cognizant neither admitted nor denied the SEC's findings,[8] and merely "agree[d] and consent[ed] to the facts and conditions" set forth in the declination letter,[9] including a cursory one-paragraph summary of facts. The allegations in the Coburn and Schwartz Indictment and Complaint are still unproven.

The SEC Order alleges that Cognizant used a third party in India to make payments of $2 million, $870,000, and $770,000 to "foreign officials" in connection with three construction projects in India.[10] In connection with the largest payment, the SEC says that Cognizant withheld ongoing payments to the third party in order to overcome the third party's resistance to making the payment to the foreign official.[11] In each case, Cognizant allegedly reimbursed the third party through fictitious line items in change orders at the close of construction,[12] the lack of controls over which was the basis for the internal controls charge in the Cognizant Order.[13]

"Both enforcement actions are significant at least as much for their related actions against individuals as for the corporate actions themselves."

The Cognizant Declination, as is usual, contains a short description of the findings of DOJ's investigation, but it specifically mentions only the $2 million payment.[14] The Coburn and Schwartz Indictment and Complaint contain more information about their involvement, including describing video-conferences in April 2014 during which Coburn and Schwartz (who were in the United States at the time) allegedly approved the $2 million payment.[15]

Continued on page 4

8. Cognizant Order at II.
9. Cognizant Declination at 3.
10. Cognizant Order ¶ 2.
11. *Id.* ¶ 13.
12. *Id.* ¶ 14.
13. *Id.* ¶ 24.
14. Cognizant Declination at 1–2.
15. Coburn and Schwartz Indictment ¶¶ 12–13; Coburn and Schwartz Complaint ¶ 27.

Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

Continued from page 3

The Cognizant Order and Cognizant Declination are noteworthy for the involvement of senior U.S. management and for apparent differences between the SEC and DOJ in resolving the case. Many FCPA cases involving U.S. companies relate to allegations of employees of a foreign subsidiary independently acting in a manner that causes an issuer to violate the FCPA (with U.S. management at most ignoring red flags).[16] The Cognizant enforcement actions, on the other hand, allege significant involvement by top U.S. management in approving the payment and instructing local management to withhold payments to the third party in order to pressure it into making the payment.[17]

"Involvement by executive management" is an aggravating factor in DOJ's FCPA Corporate Enforcement Policy,[18] and "a tone of lawlessness set by those in control of the company" is a consideration in the SEC's Seaboard Report.[19] Given the involvement of its most senior executives in the alleged payments, the fact that Cognizant was granted a declination with disgorgement and received a relatively small $6 million SEC civil penalty is surprising, a fact specifically noted in the Cognizant Declination.[20] The relatively lenient treatment of Cognizant could be the result of the enforcement agencies' continued desire to reward self-reporting and cooperation, even when aggravating factors are present.

DOJ enforcement actions often cite a percentage departure from the sentencing guidelines calculation. But the inherent uncertainty in those calculations (especially in the determination of the "base amount" used in the calculation) often obscures the actual benefit (if any) received by a self-reporting company. By proceeding in this way despite involvement of senior management in the Cognizant case, DOJ (and to a lesser extent the SEC) have provided a clearer example of the benefits of self-reporting.

The relatively lenient treatment is also possibly related to DOJ's long-stated – and increasingly actualized – commitment to individual accountability in FCPA cases. As both Coburn and Schwartz are U.S. citizens and residents, the Cognizant case (unlike cases involving employees of foreign subsidiaries) presents the opportunity (seized on by DOJ) to bring individual actions against senior executives.

Continued on page 5

16. For example, this was the case in last year's India-related settlements with Stryker and Beam Suntory or the various SEC and DOJ hiring practices cases. *See, e.g.*, SEC Press Release No. 2018-222, *SEC Charges Stryker A Second Time for FCPA Violations* (Sept. 28, 2018), https://www.sec.gov/news/press-release/2018-222; Andrew M. Levine, Jane Shvets, Colby A. Smith, Philip Rohlik & Olivia Cheng, "FCPA Settlements Reached with Beam Suntory and Credit Suisse," FCPA Update, Vol. 9, No. 12 (July 2018), https://www.debevoise.com/insights/publications/2018/07/fcpa-update-july-2018.

17. Cognizant Order ¶¶ 12–13; Coburn and Schwartz Indictment ¶¶ 13–14; Coburn and Schwartz Complaint ¶¶ 27–31.

18. U.S. Dep't of Justice, U.S. Attorney's Manual § 9-47.120 – FCPA Corporate Enforcement Policy, https://www.justice.gov/criminal-fraud/file/838416/download.

19. SEC, *Report of the Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and the Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions*, Securities Exchange Act Rel. No. 44969 (Oct. 23, 2001), https://www.sec.gov/litigation/investreport/34-44969.htm.

20. Cognizant Declination at 2 ("Despite the fact that certain members of senior management participated in and directed the criminal conduct . . . .").

Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

Continued from page 4

In particular, the choice to indict Schwartz, who was the general counsel of Cognizant and then (at the time of the alleged payment) its Chief Legal and Corporate Affairs Officer, should be seen as a warning shot to legal and compliance personnel at U.S. companies that they can become subject to criminal liability in some circumstances. The indictment does not go into a significant amount of detail regarding Schwartz, but assuming the criminal case against him goes forward, corporate counsel will want to follow the development of the allegations to determine to what extent they may relate to his legal role.

The Cognizant enforcement action is also notable with regard to two seeming disagreements between the SEC and DOJ. First, the SEC, which alleged payments in connection with three construction projects, found $16.4 million in profits requiring disgorgement.[21] In contrast, DOJ, which alleged a payment in connection with a single construction project, found $19.4 million in profits requiring disgorgement, specifying that this amount was arrived at "as determined through a cost avoidance calculation."[22] While there are many ways to calculate profit, the inability of the enforcement agencies to agree on that method demonstrates a certain degree of subjectivity in disgorgement calculations, a fact that can limit the perceived benefit of self-reporting and cooperating.

Second, while the SEC found that Cognizant violated the internal controls provisions of the FCPA,[23] DOJ explicitly credited the company for "the existence and effectiveness of the Company's pre-existing compliance program" as well as subsequent enhancements[24] – a seeming disagreement that, once again, demonstrates the SEC's "virtual strict liability" approach to the internal controls provisions.[25]

Karimova and MTS

On March 7, 2019, DOJ announced the indictment of Gulnara Karimova, the daughter of the now-deceased former president of Uzbekistan, and Bekhzod Akhmedov, the former head of MTS's now-defunct Uzbek subsidiary ("Uzdunrobita") and alleged confidant of Karimova who promoted her business interests.[26] Karimova was

Continued on page 6

21. Cognizant Order at IV.A.
22. Cognizant Declination at 2.
23. Cognizant Order ¶ 24.
24. Cognizant Declination at 2.
25. *See, e.g.*, Paul R. Berger, Jonathan R. Tuttle, Bruce E. Yannett, Philip Rohlik & Jil Simon, "Beyond 'Virtual Strict Liability': SEC Brings First FCPA Enforcement Action of 2018," FCPA Update, Vol. No. 8 (Mar. 2018), https://www.debevoise.com/~/media/files/insights/publications/2018/03/fcpa_update_march_2018.pdf.
26. *See* DOJ Press Release No. 19-200, *Mobile Telesystems Pjsc and Its Uzbek Subsidiary Enter into Resolutions of $850 Million with the Department of Justice for Paying Bribes in Uzbekistan: Former General Director of MTS's Uzbek Subsidiary and Former Uzbek Official Charged in Bribery and Money Laundering Scheme Totaling Almost $1 Billion* (Mar. 7, 2019), https://www.justice.gov/opa/pr/mobile-telesystems-pjsc-and-its-uzbek-subsidiary-enter-resolutions-850-million-department.

Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

Continued from page 5

charged with one count of conspiracy to commit money laundering, and Akhmedov was charged with one count of conspiracy to violate the FCPA, two counts of violating the FCPA, and one count of conspiracy to commit money laundering. The allegations against Karimova and Akhmedov relate to a bribery scandal involving the telecommunications industry in Uzbekistan, which already has resulted in settlements with VimpelCom Limited (now known as Veon), Telia Company, and now MTS, as set out further below.

According to the indictment, in the early 2000s, Karimova and Akhmedov agreed that Akhmedov would solicit and facilitate bribe payments from the telecommunications companies seeking entry into the Uzbek market. In return, Karimova allegedly used her influence over Uzbek authorities to help these companies enter and grow their business in the country. The indictment alleges that, over the years, Karimova obtained over $865 million in bribes and then laundered those bribes through U.S. bank accounts.

Karimova was not charged with violating the FCPA because, unlike more recent anti-bribery legislation such as the UK Bribery Act, the FCPA does not criminalize taking bribes. Karimova was also not charged with conspiracy to violate the FCPA. Ever since the Fifth Circuit held in *United States v. Castle*[27] that such a charge would circumvent congressional intent not to criminalize bribe recipient's conduct, DOJ has not charged foreign officials with conspiracy to violate the FCPA.

In recent years, however, that has not prevented DOJ from aggressively deploying money laundering charges to pursue foreign officials who allegedly solicit or receive bribes. In other recent examples, several officials of Venezuela's state-owned energy company Petróleos de Venezuela S.A. ("PDVSA") pleaded guilty to money laundering charges in connection with the alleged "pay-to-play" bribery scheme involving PDVSA's procurement processes.[28] DOJ also charged a Barbadian official along with the two Insurance Corporation of Barbados Limited ("ICBL") senior executives from whom he received bribes to secure government contracts.[29]

The indictment against Karimova follows this pattern, though the U.S. authorities may have more difficulty bringing Karimova to justice in the United States. She is reported to have been under house arrest in Uzbekistan since 2017, when she was sentenced to five years on fraud and money laundering charges. And just days before

Continued on page 7

27. 925 F.2d 831 (5th Cir. 1991).

28. *See, e.g., United States v. Ivan Alexis Guedez*, No. 18-CR-611 (S.D. Tex. Oct. 31, 2018), https://www.justice.gov/opa/pr/texas-businessman-pleads-guilty-money-laundering-charges-connection -venezuela-bribery-scheme; *United States v. Cesar David Rincon-Godoy*, No. 17-CR-00514 (Apr. 19, 2018), https://www.justice.gov/opa/pr/five-former-venezuelan-government-officials-charged-money-laundering-scheme-involving-forei-0.

29. DOJ Press Release No 19-31, *Former Chief Executive Officer and Senior Vice President of Barbadian Insurance Company Charged with Laundering Bribes to Former Minister of Industry of Barbados* (Jan. 28, 2019), https://www.justice.gov/opa/pr/former-chief-executive-officer-and-senior-vice-president-barbadian-insurance-company-charged. ICBL also received a declination under DOJ's Corporate Enforcement Policy.

Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

Continued from page 6

the announcement of the indictment against her, Karimova reportedly was moved to an Uzbek prison for violating the terms of her house arrest.[30]

Also on March 7, 2019, in the third corporate resolution related to the Uzbek telecommunications industry, MTS agreed to pay a total of $850 million to DOJ and the SEC to settle allegations that, between 2004 and 2012, it made improper payments to Karimova. The MTS resolution follows similar settlements with VimpelCom, which paid a total of $795 million to U.S. and Dutch authorities in February 2016,[31] and Telia, which agreed to pay a total of $965 million to U.S., Dutch, and Swedish authorities in September 2017.[32]

"The allegations against Karimova and Akhmedov relate to a bribery scandal involving the telecommunications industry in Uzbekistan, which already has resulted in settlements with VimpelCom Limited (now known as Veon), Telia Company, and now MTS . . . ."

The MTS settlement had a similar structue as the VimpelCom and Telia resolutions. MTS's agreement with DOJ consisted of a deferred prosecution agreement by the Russian parent company, which has ADRs listed on the New York Stock Exchange, and a guilty plea by an Uzbek subsidiary, KolorIT Dizayn Ink LLC ("KolorIT"). DOJ charged MTS with one count of conspiracy to violate the FCPA's anti-bribery and books and records provisions and one count of violating the FCPA's internal controls provisions. KolorIT pleaded guilty to one count of conspiracy to violate the anti-bribery and books and records provisions of the FCPA. MTS agreed to pay penalties to the United States totaling $850 million, including the payment by MTS of a $500,000 criminal fine and $40 million in forfeiture for KolorIT.[33]

Continued on page 8

30. *See Gulnara Karimova: Uzbekistan Ex-Leader's Daughter Jailed*, BBC (Mar. 6, 2019), https://www.bbc.co.uk/news/world-asia-47468741.

31. *See* DOJ Press Release No. 16-194, *VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than $795 Million; United States Seeks $850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme* (Feb. 18, 2016), https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million.

32. *See* DOJ Press Release No. 17-1035, *Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than $965 Million for Corrupt Payments in Uzbekistan* (Sep. 21, 2017), https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965. Sweden could not collect its allocated portion of the penalty because Swedish prosecutors did not secure convictions of individual Telia managers, a prerequisite under Swedish law. On March 20, 2019, Telia announced that it had paid the $208.5 million earmarked for Sweden to the Netherlands. *See* James Thomas, *Telia Pays US$208.5 Million in Disgorgement to the Netherlands, Global Investigations Review* (Mar. 19, 2019), https://globalinvestigationsreview.com/article/1189010/telia-pays-ususd2085-million-in-disgorgement-to-the-netherlands.

33. *See* Deferred Prosecution Agreement ¶7(d), *United States v. Mobile TeleSystems PJSC*, No. 19-CR-00167-JPO (S.D.N.Y. Feb. 22, 2019), https://www.justice.gov/criminal-fraud/file/1147381/download [hereinafter "MTS DPA"].

Individual Accountability and the First FCPA Corporate Enforcement Actions of 2019

Continued from page 7

The SEC separately entered into a settled a cease-and-desist order based on the same underlying conduct and required MTS to pay a civil penalty of $100 million, credited by DOJ.[34] The SEC order stated that MTS had violated the anti-bribery, books and records, and internal controls provisions of the FCPA.

The underlying allegations against MTS and KolorIT involved a series of payments between 2004 and 2012, allegedly to improperly benefit Karimova. Uzdunrobita was expropriated from MTS by the Uzbek government in 2012, and the company no longer does business in Uzbekistan. Although DOJ recognized that MTS is "committed to continuing to enhance its compliance program and internal accounting controls," it nevertheless required a three-year independent compliance monitor "because the Company has not yet fully implemented or tested its compliance program."[35] A monitor was also appointed in the VimpelCom (but not in the Telia) case.

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Continued on page 9

34. Order, *In re Mobile TeleSystems PJSC*, Securities Exchange Act Rel. No. 85261 (Mar. 6, 2019), https://www.sec.gov/litigation/admin /2019/34-85261.pdf.

35. MTS DPA ¶¶ 4(d)-(e).

DOJ Revises Corporate Enforcement Policy and Eases Stance on Messaging Apps

On March 8, 2019, the U.S. Department of Justice ("DOJ") made several changes to its Policy on Corporate Enforcement of the Foreign Corrupt Practices Act (the "Policy"). The most important of these revisions is a softening of DOJ's stance on the use of "ephemeral messaging platforms" such as WhatsApp, Signal, and WeChat. While this revision provides companies more flexibility in the types of messaging services they permit employees to use, it also maintains an expectation by DOJ that companies will ensure that business records and communications are appropriately preserved. The updated Policy features several other noteworthy revisions, which are discussed below. In general, DOJ's revisions are likely to be well-received by the business community, and demonstrate DOJ's willingness to refine its policies to reflect business realities.

Background

DOJ originally adopted the Policy in November 2017 as a permanent replacement for the pilot program that preceded it. The Policy provides companies with increased certainty about the benefits of cooperating with DOJ and offers the presumption of a declination if companies voluntarily self-report misconduct, fully cooperate with an investigation, and timely and appropriately remediate issues.[1]

The original Policy also required companies to prohibit employees from "using software that generates but does not appropriately retain business records or communications,"[2] such as WhatsApp. Some companies routinely use such messaging platforms to communicate both internally and externally. Following the adoption of the Policy, doing so created the risk that such companies would be unable to benefit from the presumption of a declination when resolving a DOJ investigation.

Revisions to the Policy

Ephemeral Messaging

In an acknowledgment that business communications frequently take place over applications such as WhatsApp and Signal, DOJ refined its stance on the use of ephemeral messaging platforms in the March 2019 revisions to the Policy.

Continued on page 10

1. *See* Debevoise & Plimpton LLP Client Update, "DOJ Announces a Revised FCPA Corporate Enforcement Policy" (Nov. 30, 2017), *available at* www.debevoise.com/~/media/files/insights/publications/2017/11/20171130%20doj_announces_revised_fcpa_policy.pdf.
2. United States Department of Justice, "United States Attorneys' Manual" § 9-47.120, https://www.justice.gov/criminal-fraud/file/838416/download [hereinafter "United States Attorneys' Manual"].

DOJ Revises Corporate Enforcement Policy and Eases Stance on Messaging Apps
Continued from page 9

DOJ clarified that it does not expect companies to prohibit employees from using ephemeral messaging platforms; rather, DOJ expects companies to implement "appropriate guidance and controls on the use of personal communications and ephemeral messaging platforms that undermine the company's ability to appropriately retain business records or communications or otherwise comply with the company's document retention policies or legal obligations."[3]

Other Changes

The updated Policy reflects several other changes. *First*, if a company undertakes a merger or an acquisition, uncovers misconduct through thorough and timely due diligence – or, in appropriate instances, through post-acquisition audits or compliance integration efforts – and voluntarily self-discloses the misconduct and takes actions consistent with the Policy, there will be a presumption of a declination.[4]

Second, to receive cooperation credit, companies must disclose information about "all individuals *substantially* involved in or responsible for" wrongdoing.[5] This is a change from the original Policy, which required a company to disclose information about "*all* individuals involved in or responsible for the misconduct at issue."[6]

Third, the revised Policy clarifies the "de-confliction" requirement. The revised Policy still states that a company, where requested and appropriate, must de-conflict witness interviews and other investigative steps it intends to take as part of an internal investigation with the steps that DOJ intends to take as part of its investigation. But the revised Policy clarifies that DOJ will not take any steps to affirmatively direct a company's internal investigation, though it may request that a company refrain from taking specific actions for a limited time period.[7] This change attempts to strike a balance between the need for de-confliction and the recognition that companies should have independence in conducting internal investigations.

Finally, DOJ clarified that neither cooperation nor voluntary self-disclosure credit will be predicated upon waiver of the attorney-client privilege.[8]

Continued on page 11

3. Justice Manual 9-47.120 – FCPA Corporate Enforcement Policy.
4. *Id.*
5. *Id.* (emphasis added).
6. United States Attorneys' Manual § 9-47.120 (emphasis added). This change follows a corresponding change to the Yates Memo in November 2018. *See* Debevoise & Plimpton LLP Client Update, "DOJ Revises Yates Memo to Provide More Flexibility in Corporate Investigations" (Dec. 2018), *available* at https://www.debevoise.com/~/media/files/insights/publications/2018/12/201812_fcpa_update_december_2018.pdf.
7. Justice Manual 9-47.120 – FCPA Corporate Enforcement Policy.
8. *Id.*

DOJ Revises Corporate Enforcement Policy and Eases Stance on Messaging Apps
Continued from page 10

Implications for Future FCPA Enforcement

Important practical implications arise from DOJ's softening of its approach to messaging platforms and changes to the Policy in the mergers and acquisitions context.

First, the updated Policy recognizes the reality that ephemeral messaging platforms have become ubiquitous in day-to-day business communications. Yet it also highlights that DOJ continues to view communications on these platforms as important for detecting misconduct. DOJ has not elucidated specific "guidelines and controls" that would satisfy the Policy. Rather, the Policy gives companies flexibility to use the communication platforms and compliance solutions that serve their business needs, so long as they retain messages that may constitute business records consistent with their legal obligations. The Policy's continued use of the term "appropriately" supports the notion that DOJ will apply a reasonableness standard,

"DOJ clarified that it does not expect companies to prohibit employees from using ephemeral messaging platforms; rather, DOJ expects companies to implement 'appropriate guidance and controls on the use of personal communications and ephemeral messaging platforms . . . ."

similar to the risk-based, rather than the "one size fits all" compliance approach generally encouraged. However, companies that do not enhance their compliance programs to ensure that communications using ephemeral messaging services are restricted to personal use or that appropriate business records are preserved will run the risk of being unable to obtain full cooperation credit in a DOJ investigation.

Second, in the mergers and acquisitions context, the revised Policy actively encourages transactions and acknowledges the liability risks taken by acquiring companies for past FCPA violations of the target. This change tacitly acknowledges that constraints on information-sharing between transacting parties in the pre-acquisition stage could result in FCPA exposure for the acquirer. The Policy's post-acquisition compliance focus should afford some comfort to acquiring companies with robust compliance programs that they can avail themselves of the Policy if they identify wrongdoing at the target.

Continued on page 12

DOJ Revises Corporate Enforcement Policy and Eases Stance on Messaging Apps
Continued from page 11

The cumulative changes in the Policy reflect DOJ's willingness to address real-world business challenges to FCPA compliance. These changes are designed to further incentivize corporations to voluntarily self-disclose potential misconduct. The revisions are in line with DOJ's pronounced commitment to promoting transparency and the need to ensure an "ongoing process of refinement and reassessment."[9] In light of DOJ's stance, companies and FCPA practitioners should continue to maintain an open dialogue to advance mutual interests of DOJ and the business community.

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9. DOJ Press Release, "Assistant Attorney General Brian A. Benczkowski Delivers Remarks at the 33rd Annual ABA National Institute on White Collar Crime Conference" (Mar. 8, 2019), *available at* https://www.justice.gov/opa/speech/assistant-attorney-general-brian-benczkowski-delivers-remarks-33rd-annual-aba-national.

FCPA Update

FCPA Update is a publication of
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