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A Washington D.C. Perspective on Corporate Compliance

Presented by:

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Partisanship and Enforcement of Criminal and Civil Law

- Democratic and Republican Administrations enforce the criminal and civil law
- No free ride in any Administration but some differences in approach may be discernable
 - DOJ viewed as less political but often in the eyes of the beholder, i.e., each political party assails the other for politicization of DOJ
 - From a business perspective, compliance must be taken very seriously irrespective of political party in White House



Partisanship and Enforcement of Criminal and Civil Law (Cont'd.)

- Cases that grab headlines should not give false sense of comfort that your business will not be scrutinized
- Most vulnerable to enforcement if
 - The inherent nature of the business attracts attention
 - Arms
 - Legal pharmaceuticals
 - Technologies that could cause harm to domestic interests, including national security and financial system



Divided Government Can Complicate Enforcement

- Majorities in the U.S. House and Senate have significant oversight powers
 - Limited check on congressional exercise (and abuse) of its oversight powers and grandstanding
- Republicans tend to do less oversight, Democrats more, significant in light of current House majority



Divided Government Can Complicate Enforcement (Cont'd.)

- Oversight is very public, with public hearings intended to both collect facts and score political points
 - Reputational exposure is significant
 - Entities perceived as friendly to the other party or the Administration may attract oversight attention
 - Rules of engagement are not the same as those in the courts
 - Legal strategy as important in oversight as in criminal and civil enforcement
 - Compliance plan vital here too



Other Important Law Enforcement Officials

- Any business that requires federal action by the Administration can attract complaints or attention
- Appointed to combat “waste, fraud and abuse”, Inspectors General can bring cases
 - Often in concert with other law enforcement officials, including the FBI
 - Accountability runs to the Administration and Congress, so Administration cannot easily stop investigations
- Many IG cases embarrass Administration officials even in investigation stage as leaks are common



Other Important Law Enforcement Officials (Cont'd.)

- Sources of investigations can include the following:
 - Internal complaints by federal officials who may view themselves as whistleblowers, officially or unofficially
 - Program audits that pick up anomalies, including suspicious (or not) deviation from ordinary process
 - Congressional referrals, either based in fact or simple innuendo
 - Press reports
- Once an IG investigation begins it would require the same approach to compliance as has been addressed here today



Practical Implications of Presidential Re-Election

- Presidential re-elections are always highly charged
 - Will generate external reports of inappropriate conduct by Administration officials, well founded or not
 - Reputational exposure is a risk, especially as media will have significant appetite to report on all



Practical Implications of Presidential Re-Election (Cont'd.)

- Compliance plan is critical here too as some level of investigation will follow, and be public
 - Congressional oversight
 - Law enforcement (including Inspectors General)
 - State attorney general interest may be high, e.g., in states where the AGs are interested in political benefits of investigation
 - Claims that DOJ is not investigating for political reasons



Foreign Agents Registration Act (FARA)

- **FARA** is a disclosure statute that requires persons acting as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities
 - Disclosure allows the U.S. Government to monitor and evaluate activities of foreign agents
 - Enforced by Counterintelligence and Export Control Section of National Security Division
 - In 2007, Justice Department reported approximately 1,700 lobbyists representing more than 100 countries



Foreign Corrupt Practices Act (FCPA)

- **FCPA** is a law first passed in 1977 that prohibits U.S. firms and individuals from paying bribes to foreign officials in furtherance of a business deal
 - Anti-bribery provisions apply to all U.S. persons, certain foreign issuers of securities, and foreign firms and persons who cause, directly or through agents, an act in furtherance of a corrupt payment to take place within U.S. territory
 - Requires companies whose securities are listed in the U.S. to
 - Keep books and records that accurately and fairly reflect transactions, and
 - Maintain an adequate system of internal accounting controls
 - Enforced by Security and Exchange Commission (SEC) and DOJ
 - September 2014: Hewlett Packard Russia pled guilty to FCPA violations in the Northern District of California for paying \$10.9M to the Prosecutor General of Russia to win a €35 million contract to supply computer equipment throughout Russia - Sentenced to pay \$58.7M fine



Q&A



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Thank you!