The U.S. Attorney’s Office and Corporate Compliance

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The U.S. Department of Justice

• Attorney General
  – “Main Justice”
  – Criminal Division etc.,
    • Fraud Section
      – FCPA
    – Computer Crime and Intellectual Property (CCIPS)
    – Money Laundering and Asset Recovery Section (MLARS)
The U.S. Attorney’s Office

- U.S. Attorney’s Office
  - Headed by a U.S. Attorney
  - Chief Federal Law Enforcement Officer
  - 93 U.S. Attorneys covering 94 federal districts
  - District of Minnesota
    - 63 prosecutors
    - 140 employees and contractors
    - Minneapolis and St. Paul

The U.S. Department of Justice

- U.S. Attorney’s Office and “Main Justice”
- Federal Law Enforcement Agencies
- Enforcement Agencies
  - SEC
- State Law Enforcement and Regulatory Partners
  - Minnesota Attorney General’s Office
  - Department of Commerce
DOJ and Compliance?

• Justice Manual, 9-28.200: General Considerations of Corporation Liability: *Vigorous enforcement of the criminal laws against corporate wrongdoers, where appropriate, results in great benefits for law enforcement and the public…Indictment of corporations for wrongdoing enables the government to be a force for positive change of corporate culture, and a force to prevent, discover, and punish serious crimes.*

DOJ and Compliance

• Why does compliance matter?
  – Impact on a company when faced with potential misconduct leading to DOJ involvement
  – First line of defense to prevent misconduct
  – If not able to prevent misconduct, allow for earlier detection.
DOJ and Compliance

• Why does compliance matter?
  – DOJ is increasing its focus on compliance
  – Increasing transparency about how a compliance program will be evaluated

• Effectiveness of a compliance program is a consideration that can affect:
  • Charging decisions
  • Prosecutorial discretion
  • Sentencing recommendations
    – Fines
    – Ongoing compliance testing/oversight
Case Study - Airbus

- DOJ, SFO, PNF
- 2013-2015 bribery scheme involving payments to Chinese executives at controlled airlines
- FCPA, ITAR
- DPA
- Agreement reflects significant benefits of self-disclosure
- $4 billion in penalties

Case Study - Airbus

- Cooperation credit from DOJ
- Remediation: terminating employees
- Implementation of a strong compliance program
- No voluntary disclosure credit for FCPA violations
- Cooperation credit based on evidence collection and data analysis
3 Questions for Compliance Program

• Is the compliance program well-designed?

• Is the program being applied earnestly and in good faith? (Effective implementation?)

• Does the compliance program work in practice?

Compliance Program and the Company

• Has a company “incorporate[d] the culture of compliance into its day-to-day operations.”

• What tone is “set at the top”

• Commit at all management levels: “senior leaders and middle-management stakeholders”
Compliance Program and the Company

- Demonstrate that commitment:
  - Management must lead by example:
    - Have managers
      - Allowed “greater compliance risks in pursuit of new business or greater revenues?”
      - “Encouraged employees to act unethically to achieve a business objective”

Compliance Program and the Company

- Have managers
  - Impeded compliance personnel from effectively implementing their duties?

**DOJ does not want a “checklist” approach to compliance**
Transparency and Guidance

- “Evaluation of Corporate Compliance Program” – April 2019

DOJ and Compliance

- Thank you