THE UNITED STATES DEPARTMENT of JUSTICE
STICE NEWS

Assistant Attorney General Kenneth A. Polite Delivers Remarks at the University of Texas Law School

Dallas, TX ~ Friday, September 16, 2022

Thank you, Kit, for the kind introduction. I know how much all of us appreciate the opportunity to convene in person. It's a pleasure to be here in Dallas, with so many friends and former colleagues.

Let me just start by thanking my corporate prosecutors and support staff in both the Fraud and Money Laundering and Asset Recovery Sections for their tremendous work. They travel across the country, and indeed, across the globe, in an effort to combat corruption and fraud in our corporate sector. Since September of last year, a few of their accomplishments include:

- Conducting 42 trials against 61 defendants in 18 districts and obtaining convictions in hard-fought trials against multiple defendants, including the president of a publicly traded medical technology company for securities and health care fraud, a former senior U.S. Navy employee on bribery charges, and two former director-level traders at J.P. Morgan for engaging in a widespread scheme to manipulate the precious metals markets.

- With the verdict against those two traders, we have now secured convictions of ten former traders at Wall Street financial institutions, including J.P. Morgan, Bank of America/Merrill Lynch, Deutsche Bank, The Bank of Nova Scotia, and Morgan Stanley—all of which underscore our steadfast commitment to prosecuting those who undermine the investing public's trust in the integrity of our commodities markets. In connection with these individual cases, and as part of the Section's commodities-enforcement program, we have resolved six corporate cases with banks and proprietary-trading firms with combined criminal monetary penalty amounts of over $1.1 billion.

- As part of our FCPA enforcement efforts against multiple individuals involved in financial crime, we have brought bribery-related money laundering charges against the former Comptroller General of Ecuador and a former Minister of Government of Bolivia; charges against three businessmen relating to an alleged bribery and money laundering scheme in Ecuador; charges against two former coal company executives relating to an alleged bribery scheme in Egypt; and charges against five individuals for their roles in laundering the proceeds of food and medicine contracts in Venezuela that were allegedly obtained through bribery. In the anti-corruption space, in addition to charging individuals and corporations, we are committed to seeking out foreign partners and working in parallel to support the global fight against corruption.

- We have charged nine defendants for their alleged involvement in cryptocurrency-related fraud, including 1) the largest known Non-Fungible Token (NFT) scheme charged to date involving a fraudulent investment fund that purportedly traded on cryptocurrency exchanges, 2) multiple global Ponzi schemes involving the sale of unregistered crypto securities, and 3) fraudulent initial coin offering cases.

- We have reached appropriately tailored resolutions with eight companies, including both DPAs and guilty pleas, and, in one instance, a declination with disgorgement. These resolutions involved foreign corruption in multiple industries and regions of the world, emissions testing fraud, and fraud by one of the largest providers of privatized military housing to the U.S. Armed Forces, among other misconduct.

- We established the New England Prescription Opioid Strike Force (NEPO) as part of our ongoing response to the nation's opioid epidemic.

- Through the Kleptocracy Asset Recovery Initiative, we have focused our efforts on identifying and forfeiting proceeds of corruption connected to Russian oligarchs, including the seizure of a $300 million yacht owned by a sanctioned oligarch.

- We are continuing the longstanding victim remission work that MLARS leads, which includes returning forfeited funds to the victims of financial crime. To cite just two examples of this ongoing work, to date, we have returned over $366 million in forfeited money to 148,000 victims of fraud through the successful criminal resolution with Western Union; and we have overseen the return of over $3.7 billion to 40,000 victims of the Madoff Ponzi scheme.

- Finally, we have created the National Cryptocurrency Enforcement Team, which consists of dedicated prosecutors from MLARS, the Computer Crime and Intellectual Property Section, and United States Attorney's Offices focused on individuals and entities that exploit or otherwise enable the use of cryptocurrency for criminal ends.

And even with all of our important enforcement efforts, it bears repeating: we cannot rely exclusively on prosecutions to ensure public safety or good corporate governance. Indeed, as with any area of criminality, our ultimate goal is to *prevent* corporate crime in the first instance. Preventing the victimization of innocent investors, the loss of faith in the integrity of our markets, the corrosive effects of corruption, the fleecing of taxpayers—has been and remains my highest priority in these cases.

Deterrence plays a key role in accomplishing that objective. We deter corporate crime both by holding individual wrongdoers accountable *and* by creating an enforcement regime that incentivizes responsible corporate citizenship.

I have been fortunate in my career to have previously worked as a chief compliance officer in addition to serving as a line prosecutor, a U.S. Attorney, and defense counsel. I know the incredible challenges that compliance personnel face. But I have also seen how a strong compliance program can ward off misconduct and empower ethical employees. That is why I have made this issue—giving companies strong incentives to deter misconduct through effective compliance programs—a top focus of the Criminal Division.

Our commitment to elevating prevention is reflected in our policies, our practices, and our personnel, the same methods in which our companies reflect their commitment to building a strong compliance program.

DAG Policy Revisions

As you all well know, just yesterday, the Deputy Attorney General announced additional policies in this area.

It is important to highlight how our DAG, and the department, arrived at these new policy announcements. On the heels of her October 2021 announcement regarding individual accountability, recidivism and monitorships, the DAG formed the Corporate Crime Advisory Group (CCAG), to discuss ways to enhance our efforts to combat corporate crime. Its membership included representatives from the various Department components, including the Criminal Division and U.S. Attorney's Offices across the country—including our Deputy Assistant Attorney Generals over the Fraud Section and the Money Laundering and Asset Recovery Section, Lisa Miller and Kevin Driscoll.

But our Deputy Attorney General didn't stop there. The CCAG also included consultations with academicians, practitioners, and business leaders who all offered valuable insight.

Yesterday, the DAG announced several Department-wide policy revisions.

In brief, those revisions provide guidance addressing (1) how prosecutors should continue to prioritize individual accountability; (2) how a corporation's history of misconduct should be considered in determining the appropriate resolution of a corporate case; (3) the benefits companies can expect from voluntary self-disclosure of misconduct; (4) how the Department evaluates cooperation provided by a corporation; (5) how prosecutors will evaluate certain components of a corporation's compliance program; and (6) the use of monitors, including their selection and the appropriate scope of a monitor's work.

The DAG specifically tasked the Criminal Division with assisting further policy revisions in two areas:

First, the Criminal Division will examine whether additional guidance is necessary regarding best corporate practices on use of personal devices and third-party messaging applications, including those offering ephemeral (or disappearing) messaging.

We have seen a rise in companies and individuals using these types of messaging systems, and companies must ensure that they can monitor and retain these communications as appropriate. Indeed, there was a panel at the conference on this very topic yesterday.

Second, the Criminal Division will examine whether, in some cases, we may be able to shift the burden of corporate financial penalties away from shareholders—who in many cases do not have a role in misconduct—onto those more directly responsible.

In the coming months, our team will be meeting with, among others, our agency partners and experts on executive compensation, and gathering relevant data points. Based on these inputs, the Criminal Division will then provide further guidance on how prosecutors will consider and reward corporations that develop and apply compensation claw back policies.

Other revisions announced by the Deputy Attorney General provided new points of emphasis in the Department's approach to corporate criminal enforcement, including and in particular, regarding voluntary self-disclosure.

As many of you know, the Criminal Division's Corporate Enforcement Policy has long recognized the potential significance of timely disclosure and cooperation.

However, under the CEP, recidivism may make a company ineligible for a declination. So what would be your incentive to voluntarily self-disclose when your company has a long history of prior misconduct?

The new department-wide policy makes clear that even under those circumstances, there is still a potential benefit. A history of misconduct will not necessarily mean an automatic guilty plea unless aggravating factors—such as misconduct posing a national security threat, or deeply pervasive conduct—are present. The new DAG guidance directs all components to make their own voluntarily self-disclosure policies, but does not spell out aggravating factors beyond that. Today, I am announcing that, going forward, in the Criminal Division, those aggravating factors we will consider will include, but are not limited to, involvement by executive management of the company in the misconduct, significant profit to the company from the misconduct, or pervasive or egregious misconduct.

Unless these factors are present, even a company with a history of misconduct has a powerful incentive to make a timely self-disclosure. Why? Because it could make all the difference between a DPA and a guilty plea resolution, assuming that the company has also cooperated, and timely and appropriately remediated the criminal conduct.

CCO Cert

As to our practices, I want to address our use of Chief Compliance Officer (CCO) certifications. To ensure that compliance officials are empowered to create and maintain effective compliance programs, in March 2022, I announced that, for all Criminal Division corporate resolutions (including guilty pleas, deferred prosecution agreements, and non-prosecution agreements), we would consider requiring both the Chief Executive Officer *and* the Chief Compliance Officer (CCO) to sign a certification at the end of the term of the agreement. This document certifies that the company's compliance program is reasonably designed, implemented to detect and prevent violations of the law, and is functioning effectively. These certifications are designed to give compliance officers an additional tool that enables them to raise and address compliance issues within a company or directly with the department early and clearly.

These certifications underscore our message to corporations: investing in and supporting effective compliance programs and internal controls systems is smart business and the department will take notice.

These certifications take into account, as appropriate, the nature and circumstances of the criminal violation that gave rise to the resolution. For example, we used this new CCO certification in our recent resolutions with Glencore. Even the world's largest companies are not above the law. When—at the time of resolution—a company's compliance program is inadequate, remediation is not complete, and the criminal conduct was serious and pervasive, the

consequences are serious. Both Glencore International AG, a multi-national commodity trading and mining firm headquartered in Switzerland, and Glencore Limited, the U.S.-based subsidiary, pleaded guilty to criminal offenses.

Glencore Limited pleaded guilty to engaging in a scheme to manipulate fuel oil prices at two of the busiest commercial shipping ports in the U.S. Motivated by a desire to augment corporate profits, Glencore Ltd. placed trades to artificially move the benchmark for oil, increasing the company's profits and reducing its costs on contracts to buy and sell physical fuel oil, and affecting prices market-wide. This scheme lasted for eight years. Glencore Limited's compliance program was ineffective both during the time of the misconduct and at the time of the resolution and thus, as a term of the plea agreement, we imposed a monitorship. And, because the facts of the case involved a scheme to commit commodities fraud by manipulating fuel oil prices, the CCO certification was tailored to that misconduct: Both the CEO and Head of Compliance will be required to certify at the end of the term that Glencore Limited's "compliance program is reasonably designed to detect and prevent violations of the Commodities Laws . . . throughout the Company's operations."

This certification is meant to guarantee a seat at the table that all compliance officers should have in an organization with a functioning compliance program.

We similarly used this certification in the Glencore International AG FCPA guilty plea announced the same day, tailoring the language to foreign corruption. Separate and apart from the price manipulation scheme at Glencore Ltd., Glencore International engaged in a massive, decade-long scheme to make and conceal corrupt payments and bribes for the benefit of foreign officials, in order to obtain and retain business. Despite some investments in compliance, Glencore's program was not fully implemented or tested to demonstrate that its new enhancements would prevent and detect similar misconduct in the future, necessitating the imposition of an independent compliance monitor.

We have now also used the CCO certification in a DPA. Just yesterday, we announced an FCPA DPA with Brazil-based GOL Airlines, which related to the company's participation in a scheme to pay millions in bribes to Brazilian officials and politicians to influence two pieces of legislation favorable to the company. We did not impose a monitor in that case because at the time of the resolution, the company had redesigned its entire anti-corruption compliance program, demonstrated through testing that the program was functioning effectively, and committed to continuing to enhance its compliance program and internal controls. However, to ensure follow-through on this commitment, and because the GOL case involved bribery of foreign officials, we will require the CEO and CCO to certify at the end of the DPA term that the "compliance program is reasonably designed to detect and prevent violations of the [FCPA] and other applicable anti-corruption laws throughout the Company's operations."

We will continue to use similar certifications in our corporate resolutions as appropriate for each case.

Let me add that there has been some concern raised about this certification process. I know and trust compliance personnel. I appreciate the challenges they often face. For too long, they have complained that compliance doesn't have the same voice in corporate decision-making. These certifications and other resources are empowering you to demand that voice. A corporate leader who ignores the emphasis we are placing on compliance does so at his or her own risk. But you cannot shy away from this role. You cannot run away from the responsibility. My call is that you embrace it, knowing full well that stronger, more empowered compliance voices are exactly what we need.

Compliance Related Personnel

Speaking of strong compliance voices, let me address some of my recent personnel decisions. There is no more important legacy than the people we hire. Because of the critical role that analysis of corporate compliance programs plays in our enforcement efforts, I have made it a priority to steadily expand our capabilities in this area. First, in 2021, we restructured a dedicated group within the Fraud Section—the Corporate Enforcement, Compliance, & Policy (CECP) Unit—to ensure that it is comprised of not just veteran prosecutors, but also former defense lawyers and in-house counsel with experience in compliance, monitorships, and corporate enforcement matters.

Second, we have prioritized hiring individuals with deep compliance expertise. Earlier this week, we onboarded Matt Galvin into the CECP Unit. Matt previously served as the global compliance chief for Anheuser-Busch, and brings incredible expertise in the use of data analytics. Also this week, we welcomed Glenn Leon as our new Fraud Section Chief. In addition to his experience as prosecutor in both the DC U.S. Attorney's Office and the Fraud Section, Glenn

now joins us from his last role as Chief Ethics & Compliance Officer for Hewlett Packard Enterprise. We do not simply have one individual serving as a compliance expert for the Fraud Section—we now have a team of multiple attorneys in the CECP Unit with significant compliance and monitorship experience in different industries. And we don't stop there. We are training our line prosecutors so that top to bottom, from our Chief to the newest hires, we are equipped to assess companies' compliance programs. There is no greater measure of the import and trust I place in compliance professionals than the fact that I have now asked them to serve in some of the Division's most critical leadership roles.

In MLARS, which routinely deals with highly regulated financial institutions, we have similarly taken pains to hire prosecutors with a deep understanding of financial institution compliance programs; who are experts at evaluating whether those programs comply with the law (most notably the Bank Secrecy Act); who understand how those compliance programs support financial institutions in detecting and preventing criminal conduct occurring at or through the financial institution; and who have significant experience working closely with financial regulators.

Last but not least, I want to thank Nick McQuaid, who is departing as my trusted Principal Deputy. Nick and I previously served as colleagues in SDNY, and it was my great fortune to work with him once again in leading the Division. He will be sorely missed.

Replacing him as our Acting Principal Deputy is a young woman who I also had the honor of working alongside in the formative years of our legal careers. Nicole Argentieri served for over a decade in the U.S. Attorney's Office for EDNY, including as Chief of the Organized Crime and Gang Section, the General Crimes Section, and Public Integrity Section. She recently rejoined the Department from private practice, where she routinely provided counsel on white collar and compliance matters. Nicole's experience and energy will only strengthen the Division's already outstanding work.

Taken together, these policies, practices, and personnel decisions demonstrate our unwavering commitment to both individual and corporate accountability, while incentivizing those same actors to invest in strong compliance and internal control measures that consistently, quickly, and effectively prevent, detect, report, and remediate wrongdoing.

We may all have different roles—prosecutors, defense attorneys, business leaders, compliance officials. But know that regardless of our different perspectives, we share the common vision of prevention being the most effective tool we have in stemming crime.

Thank you, and I look forward to working with you, individually and collectively, to ensure that our world remains a safe place to live and a fair place to do business.

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Topic(s):
Financial Fraud

Component(s):
Criminal Division
Criminal - Criminal Fraud Section
Criminal - Money Laundering and Asset Recovery Section

Updated September 16, 2022