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## FCPA Enforcement Resumes With Heightened Risk for U.S. Competitors

On June 9, 2025, the U.S. Department of Justice (“DOJ” or the “Department”) issued guidance signaling a return to enforcement of the Foreign Corrupt Practices Act (“FCPA”), with a new focus on misconduct that “directly undermines U.S. national interests” and causes harm to “specific and identifiable American companies or individuals.” The DOJ’s memorandum, signed by Deputy Attorney General Todd Blanche, follows a February 10, 2025, Executive Order, “Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security” (“E.O. 14209”), which had directed the Attorney General to pause FCPA actions for up to six months while the Department evaluated whether to proceed with existing matters and considered its priorities for future enforcement. This return to enforcement means that companies should continue to be vigilant towards FCPA compliance, as we urged in our February article, [\*Perspective on the Pause – Putting DOJ’s New FCPA Enforcement Approach Into Context\*](#), Cahill Gordon & Reindel LLP (February 13, 2025). As discussed below, this has become particularly important for those non-U.S. companies that have jurisdictional links to the U.S., as they seem to be the most likely targets for future enforcement, particularly if they compete directly with U.S. firms.

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### Overview

The DOJ’s updated guidelines seek to ensure that FCPA investigations and prosecutions are carried out in furtherance of the directives outlined in E.O. 14209, by “(1) limiting undue burdens on American companies that operate abroad and (2) targeting enforcement actions against conduct that directly undermines U.S. national interests.” The guidelines further direct prosecutors to focus on individuals’ misconduct, rather than attributing “nonspecific malfeasance” to corporate structures; to work expeditiously; and to consider collateral consequences, including the disruption of lawful business during an investigation. While the guidance reiterates the Trump Administration’s previously stated focus on the “total elimination of cartels and transnational criminal organizations,” it also suggests a broader intention to investigate and prosecute corrupt payments made to win contracts and/or to secure licenses, permits and other government approvals from foreign authorities, particularly where such misconduct has caused harm to U.S. competitors.

To be clear, it is still widely assumed that the overall number of FCPA enforcement actions will decrease under President Trump, as compared to prior administrations. Indeed, the DOJ has stated that it dropped about half of the FCPA cases that were under investigation at the time of the February pause, some of which presumably involved misconduct that did not cause specific and identifiable harm to U.S. interests, or concerned lower level instances of alleged corruption. In this regard, the new guidance makes clear that the DOJ will now focus on alleged misconduct that “bears strong indicia of corrupt intent tied to particular individuals, such as substantial bribe payments, proven and sophisticated efforts to conceal bribe payments, fraudulent conduct in furtherance of the bribery scheme, and efforts to obstruct justice,” rather than cases involving “de minimis or low-dollar” payments. The guidance also reflects a centralization of enforcement, providing that new FCPA investigations and enforcement actions will require explicit authorization from the Assistant Attorney General for the Criminal Division, or someone more senior in the Department, which may further limit the number of new matters initiated. And finally, the guidance states that before opening an investigation, FCPA prosecutors should consider “the likelihood (or lack thereof) that an appropriate

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foreign law enforcement authority is willing and able to investigate and prosecute the same alleged misconduct," suggesting that in some cases there will be a greater likelihood than ever before that U.S. authorities defer to their counterparts in foreign enforcement agencies.

Nevertheless, the guidance leaves ample opportunity for FCPA prosecutors to open new investigations and commence new enforcement actions, particularly where they can identify U.S. victims of foreign corruption, and especially in (but not limited to) those sectors with importance to U.S. national security, which are identified in the guidance as defense, intelligence, and critical infrastructure.

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## New Focus on Safeguarding "Fair Opportunities" for U.S. Companies

Seeking to promote American economic security, the guidance states that the DOJ will seek to "vindicate" the interests of U.S. companies by pursuing corruption that has "deprived specific and identifiable U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals." This is not a complete sea change—indeed, the DOJ has brought some of its most impactful enforcement actions against foreign companies that compete with U.S. firms, including the likes of Odebrecht, Petrobras, Siemens, Airbus, and Alstom—but the explicit focus on vindicating U.S. victims as an FCPA enforcement prerogative is something new. While these earlier FCPA cases were not expressly predicated on the vindication of U.S. interests, it likely would not have been difficult in each case for U.S. prosecutors to identify specific U.S. companies that were directly harmed by the relevant misconduct, whether because they missed out on a public project as a result of a competitor's corrupt bid; lost a private commercial contract to a company that stayed in business by bribing health and safety, securities, or tax authorities; or suffered some other specific disadvantage that would not have existed but for a competitor's violation of the FCPA.

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## Potential Impacts and Implications for Future Enforcement

While the specific effects of this enforcement shift remain to be seen, some potential outcomes seem clear. First, U.S. companies operating abroad will now have greater incentives to report relevant misconduct by their competitors—especially foreign competitors over which the DOJ would have jurisdiction, either because they list securities in U.S. markets, or because their misconduct has some other relevant U.S. connection, such as payments passing through U.S. financial institutions. Likewise, we expect this shift to have particular resonance for foreign companies with U.S. connections, which may now see increased scrutiny, not only from the DOJ, but also from U.S.-based competitors that may seek to use these new enforcement priorities to their advantage, as a means to target competition and protect foreign subsidiaries from unfair practices.

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## Conclusion

While the risk of FCPA enforcement is now likely highest for foreign-based competitors of U.S. companies, all firms operating abroad—whether foreign or domestically domiciled—should be aware that FCPA enforcement is back and, as we reported in February, will be well-served to maintain and improve robust anti-corruption compliance programs, including policies, procedures and systems of control designed to prevent and detect potential violations.

We will provide further updates as FCPA enforcement trends come into focus.

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If you have any questions about the issues addressed in this alert, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Brian T. Markley (partner) at 212.701.3230 or [bmarkley@cahill.com](mailto:bmarkley@cahill.com); Brockton B. Bosson (partner) at 212.701.3136 or [bbosson@cahill.com](mailto:bbosson@cahill.com); Christopher A. Arkin (counsel) at 212.701.3986 or [carkin@cahill.com](mailto:carkin@cahill.com); Jennifer Potts (counsel) at 212.701.3390 or [jpotts@cahill.com](mailto:jpotts@cahill.com); Mary

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