



# The Current Enforcement Environment

## White-Collar Crash Course

October 3, 2017

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# Presented by



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# Agenda



1. White collar enforcement by the U.S. DOJ under Attorney General Sessions - Have there been changes in policies by the new administration?

2. A dive into the new DOJ initiative paring Foreign Corrupt Practices and health care fraud prosecutors

3. Increasing emphasis on proactive compliance by DOJ and HHS-OIG – What you can do to reduce your risk

# White Collar Enforcement: DOJ under Sessions



- **Current status:** Cases are in the works & there is a real emphasis on holding individuals accountable
  - **Last week:** Global settlement in Telia of \$1 billion – first big FCPA resolution since Sessions took over as AG
- **Health care front:** 8<sup>th</sup> Annual Health care fraud takedown – July 2017
  - Conspiracies to commit health care fraud, violations of the anti-kickback statute, money laundering, honest services mail fraud and wire fraud, unlicensed wholesale distribution of prescription drugs, and aggravated identity theft.
  - More than 50 physicians out of the over 400 people charged, and the DOJ stated that the alleged loss exceeds \$1.3 billion.
  - First time opioid cases included in the health care fraud takedown

**Change is coming:** Comments two weeks ago on 9/14/2017 from Deputy Attorney General Rod Rosenstein – revisions to DOJ’s policy on corporate accountability are in the pipeline



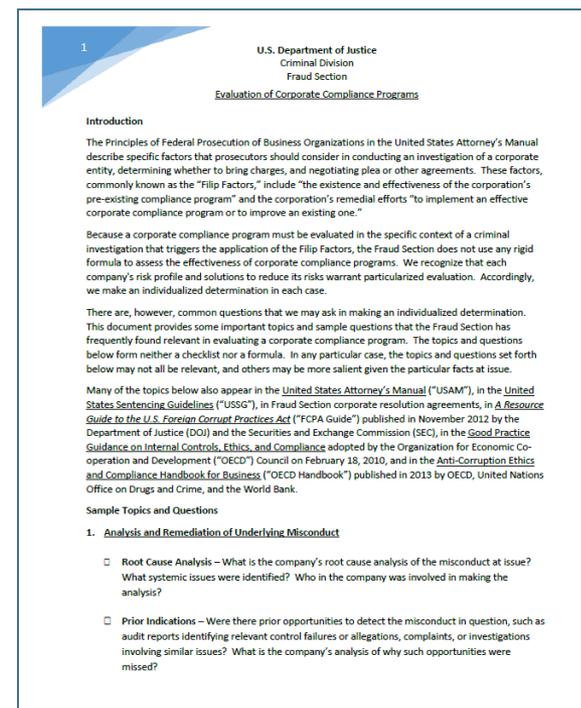
- A major new announcement DOJ in July 2017 by acting Criminal Fraud Chief Sandra Moser: coordination between the DOJ's Healthcare Fraud Unit's Corporate Strike Force and FCPA prosecutors.
  - Their mission is to “investigate and prosecute matters relating to health care bribery schemes, both domestic and abroad.”
  - Constant them from Sessions and other DOJ leadership: “We will continue to strongly enforce the FCPA and other anti-corruption laws”

- Slowdown in both healthcare fraud and FCPA cases brought by Main Justice in the first half of 2017, the DOJ is stepping up its enforcement efforts.
- Sources: Cases are in the works – increase hiring in FCPA unit
- Overlooked: FCPA unit has had three jury trials this spring and summer – most trials and successes in a year ever
- DOJ emphasis on voluntary compliance & self disclosure
- DOJ continued emphasis on holding individuals accountable for corporate misconduct

# Evaluation of Corporate Compliance Programs (“DOJ Guidance”) – February 2017



- DOJ Criminal Division, Fraud Section released this guidance
- Drawn from multiple sources (i.e., the Federal Sentencing Guidelines; the U.S. Attorneys Manual; the joint DOJ/SEC Foreign Corrupt Practices Act guide; Yates Memorandum; the compliance guidance from the OECD)
- 11 key categories:
  - 116 questions that may be asked by the DOJ when assessing a compliance program as part of a criminal investigation
- Substantial application in the civil & regulatory context



# The Compliance Program Resource Guide ("HCCA-OIG Resource Guide") – March 2017



- Jointly prepared by HHS-OIG and HCCA
- 52 page resource guide providing suggested metrics
  - Focuses on seven primary areas ("elements") of effective compliance programs
- Does not reference DOJ Guidance but derived from some of the same sources
- DOJ and OIG/HCCA guidance should be used proactively as a way for companies to internally assess their compliance programs independently of administrative, civil or criminal investigations

## Measuring Compliance Program Effectiveness: A Resource Guide

ISSUE DATE: MARCH 27, 2017

*HCCA-OIG Compliance Effectiveness Roundtable  
Roundtable Meeting: January 17, 2017 | Washington, DC*



# Ways to Reduce Risk through Compliance Programs



- Board and Senior Leadership Involvement: including obtaining certifications from those “at the top of the food chain” regarding the effectiveness of the compliance program
  - Right tone is set at the top
- Policies, Procedures and Training:
  - ensure adequate oversight, training and resources for both employees and contractors, including an emphasis on local business practices or expectations and the legal boundaries set forth in the FCPA bribery laws
  - maintaining a confidential employee hotline/employee web site to report
- Autonomy and Resources of Compliance Programs
  - routine audits to ensure compliance, and
  - establish mechanisms to appropriately and quickly address violations (FCPA or otherwise) when they are discovered.

# Ways to Reduce Risk through Compliance Programs

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- Undertaking Risk Assessment as well as Comprehensive Auditing and Monitoring
- Have clear guidelines for conducting internal investigations
- Establish the Effectiveness of Compliance and Investigations
- Accountability
  - adopting guidelines to claw back bonuses and other compensation from executives who “engage in misconduct or who simply fail to promote compliance within their organization.”
  - DOJ’s continued emphasis on individual accountability
- Adopt Corrective action plans/remedial measures

# More from Acting Criminal Fraud Chief Moser



She has urged companies to **“empower”** their compliance executives now, rather than forcing them to “sit before the Department and defend a program that they fought to make better and were denied the resources or backing to see through.”

Looking forward, companies would be well served by Moser’s warning that they need to **“invest in compliance now rather than using that would-be investment to pay a criminal fine down the road.”**

# Questions?

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# Upcoming Webinars

## White Collar Crash Course Series



- **To Be Legal Opinion or Not to Be Legal Opinion – that is the In-House Communication Question**  
Tuesday, October 10 at 2:00 – 2:15 p.m. ET  
Presenter: Christopher M. Farella
- **What Are the Risks? Business Types Facing Increased Scrutiny**  
Tuesday, October 17 at 2:00 – 2:15 p.m. ET  
Presenter: David J. Marck
- **Criminalization of Health Care**  
Tuesday, October 24 at 2:00 – 2:15 p.m. ET  
Presenter: Jack Wenik
- **Signs You May Have a Problem**  
Tuesday, October 31 at 2:00 – 2:15 p.m. ET  
Presenter: Richard W. Westling

To register, please visit: <http://www.ebglaw.com/events/>

**Thank you.**