

President Trump Issues Executive Order Pausing FCPA Enforcement and Directs Revision of Enforcement Guidelines

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On February 10, 2025, President Trump issued an Executive Order (the “Order”) directing Attorney General Pamela Bondi to pause Foreign Corrupt Practices Act (“FCPA”) enforcement for 180 days pending the issuance of revised enforcement guidelines by the Department of Justice (“DOJ”). Citing to the President’s foreign policy authority and national security interests, the Executive Order directs the DOJ to refrain from opening any new FCPA investigations and to review pending investigations during the time that the DOJ considers and issues updated guidance that prioritizes “American economic and security interests.”

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The Order appears to give at least a temporary reprieve to companies that have been under DOJ investigation for FCPA violations and foretells a potential larger shift. While it is difficult to predict how the FCPA will be enforced under the new regime once the pause is lifted, the Executive Order and related Fact Sheet signal potentially significant changes, in particular with respect to U.S. companies and individuals. Given the Order's specific focus on U.S. interests, and the administration's overall posture, the same may not be true for non-U.S. companies and individuals. Overall, there are a number of questions that will remain open pending the issuance of the guidance and further steps by the administration. For a number of reasons, however, it would be prudent for companies to nevertheless remain focused on maintaining the effectiveness of their existing compliance programs and investigating alleged misconduct as appropriate, as discussed below.

I. Introduction

The FCPA prohibits the payment, or offering to pay, money or anything of value to foreign government officials in order to obtain or retain business. The FCPA applies to all U.S. persons, businesses, and issuers of securities on U.S. exchanges, as well as their officers, directors, employees, and agents. It also applies to foreign companies who issue securities on U.S. exchanges, as well as any foreign person or foreign company that engages in any act in furtherance of a corrupt scheme while in the territory of the U.S. The DOJ has criminal enforcement jurisdiction over the FCPA, while the Securities and Exchange Commission ("SEC") has civil enforcement authority. The statute of limitations for violations of the FCPA anti-bribery provisions is

five years, although it can be longer when charged as part of a conspiracy or where tolling is obtained to extend beyond five years.

The Executive Order signed by President Trump states that "national security depends in substantial part on the United States and its companies gaining strategic business advantages whether in critical minerals, deep-water ports, or other key infrastructure or assets."¹ The accompanying Fact Sheet issued by the White House notes the goal of "eliminating undue barriers to U.S. success" by pausing FCPA actions until the Attorney General issues revised enforcement guidance.² The Fact Sheet also suggests that U.S. companies are harmed by FCPA enforcement because they are "prohibited from engaging in practices common among international competitors, creating an uneven playing field."³

The Order imposes a 180-day period, during which the Attorney General is directed to review guidelines and policies governing investigations and enforcement actions under the FCPA.⁴ Specifically, during this period, the Attorney General is ordered to:

- i. cease initiating new investigations, absent a determination by the Attorney General that an individual exception should be made;
- ii. review "in detail" all existing DOJ FCPA investigations and take "appropriate action" to "restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives"⁵; and
- iii. issue revised FCPA enforcement guidelines and policies that "prioritize

¹ Exec. Order, *Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security*, (signed Feb. 10, 2025), <https://www.whitehouse.gov/presidential-actions/2025/02/pausing-foreign-corrupt-practices-act-enforcement-to-further-american-economic-and-national-security/> [hereinafter Exec. Order, *Pausing Foreign Corrupt Practices Act Enforcement*].

² *Fact Sheet: President Donald J. Trump Restores American Competitiveness and Security in FCPA Enforcement*, The

White House (Feb. 10, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-restores-american-competitiveness-and-security-in-fcpa-enforcement/> [hereinafter *Fact Sheet*].

³ *Id.*

⁴ The Order also provides that the review period may be extended for an additional 180 days if the Attorney General deems appropriate. *Id.*

⁵ *Id.*

American interests, American economic competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources.”⁶

The Executive Order instructs that, following the issuance of the new guidelines, any continued or new investigations must be governed by the new guidelines. It also directs that any new investigations must be authorized by the Attorney General. Further, following the issuance of the new guidelines, the Attorney General must determine whether any additional actions, “including remedial measures with respect to inappropriate past FCPA investigations and enforcement actions, are warranted,” and shall take such action or recommend the President do so.⁷

II. Uncertain Implications

The Executive Order makes clear that, following the new guidance, FCPA enforcement by the DOJ against U.S. companies and individuals will likely be significantly reduced or changed in a way that strongly favors their interests. However, there are a number of questions and other uncertainties that remain.

First, given the Executive Order’s goal of “Putting America First” and allowing U.S. companies to gain “strategic commercial advantages around the world,” the DOJ may look to focus enforcement on non-U.S. companies going forward, particularly those operating in industries that the administration sees as a threat to U.S. economic interests or relevant to U.S. national security. This has been a similar theme in the

administration’s approach to tariffs and foreign policy and is also consistent with a recent policy memorandum issued by Attorney General Bondi, directing the FCPA Unit of the DOJ to focus on matters that involve cartels or transnational criminal organizations (“TCOs”).⁸ The Executive Order instructs the DOJ to prioritize “American economic and security interests and ensur[e] U.S. businesses have the tools to succeed globally.” The FCPA has already been used as a tool against corrupt acts by non-U.S. companies that impact the “level playing field” for American companies operating abroad. In fact, nine of the ten largest FCPA cases in history have been against non-U.S. companies, resulting in billions of dollars in penalties paid to the U.S. Treasury, in addition to many other enforcement actions against non-U.S. companies over the last several years. The DOJ’s focus on entities outside of the U.S. may only increase under the new guidelines.

Second, the Executive Order is directed to the DOJ and does not address civil enforcement of the FCPA by the SEC. There may be a similar approach by the SEC regarding FCPA enforcement priorities, although the timing of any similar developments at the SEC may depend on when the SEC Chair nominee, Paul Atkins, is confirmed. The former head of the SEC during the first Trump Administration, Jay Clayton, had previously expressed his view that the FCPA harmed American competitiveness – but then-Chair Clayton continued to enforce the statute at the SEC.⁹ It remains to be seen whether, once confirmed, Atkins will bring the SEC’s enforcement policy in-line with the DOJ’s.¹⁰ The SEC, which enforces the FCPA only

⁶ *Fact Sheet*; The Attorney General may approve initiation of a new investigation or enforcement action if she determines an individual exception should be made. Exec. Order, *Pausing Foreign Corrupt Practices Act Enforcement*.

⁷ *Id.*

⁸ Office of the Attorney General, *Total Elimination of Cartels and Transnational Criminal Organizations* (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388546/dl?inline>. See also Joon H. Kim, Lisa Vicens, Rahul Mukhi, Katherine Lynch, Jordan McMeans, David A. Last, and Samuel Chang, *Trump Administration Targets International Cartels and Transnational Criminal Organizations, Shifting Enforcement Focus for Businesses*, Cleary Gottlieb (Feb. 10,

2025), <https://www.clearygottlieb.com/-/media/files/alert-memos-2025/trump-administration-targets-cartels-shifting-enforcement-focus-for-businesses.pdf>.

⁹ Jacob M. Schlesinger, *SEC Chairman Pick Clayton Criticized ‘Zealous’ Foreign Bribery Law Enforcement*, WSJ (Jan. 4, 2017 11:29am), https://www.wsj.com/articles/sec-chairman-pick-clayton-criticized-zealous-foreign-bribery-law-enforcement-1483547345?mod=article_inline.

¹⁰ Atkins has, in the past, expressed a desire to reduce penalties for companies where shareholders are not directly impacted by wrongdoing. Paul S. Atkins, *Remarks before the Atlanta Chapter of the National Association of*

on U.S. and foreign issuers of U.S. securities, will also need to consider the impact on investors of pausing enforcement wholesale. In particular, the SEC enforces the books and records and internal controls provisions of the FCPA, which are codified as part of the Securities and Exchange Act, against numerous companies both inside and outside of the FCPA context to ensure that issuers have accurate books and records and reasonable internal controls over financial accounting, regardless of whether evidence of corrupt payments is established.

Third, it remains to be seen how this Order will interact with the recent policy memorandum issued by Attorney General Bondi directing DOJ prosecutors to prioritize investigations related to foreign bribery that facilitates the criminal operations of cartels and TCOs and to “shift focus away” from matters unrelated to that priority.¹¹ It is possible that this just recently announced policy will be incorporated into the new guidance, or it could be subsumed by a more holistic revision of priorities.

III. Key Takeaways

The most immediate impact of the Executive Order is the 180-day pause on FCPA investigations pending the issuance of new guidance and the review of ongoing matters. This may be a welcome reprieve to many companies and individuals under current investigation. However, there is significant uncertainty regarding what future enforcement of the FCPA will look like. It would therefore be prudent for companies to remain focused on maintaining the effectiveness of their existing compliance programs and investigating alleged misconduct as appropriate. As a threshold matter, the FCPA remains an enforceable criminal law, and, at this time, the SEC’s FCPA enforcement is not implicated by the Executive Order. The statute of limitations for violating the FCPA is five years and

potentially even longer if charged as a conspiracy or extended by tolling. This means that potential misconduct identified now could be subject to investigation and charging well beyond the term of this administration. DOJ also regularly investigates and prosecutes violations of other federal criminal statutes in cross-border matters, including money laundering, wire fraud, Travel Act, and sanctions-related offenses. The DOJ may still prioritize such cases, particularly those involving cartels, TCOs, and in other circumstances that implicate U.S. interests. Finally, it bears noting that misconduct abroad can also lead to investigations and charges by foreign authorities, many of which have similar anti-corruption laws and have increased their enforcement activity and investigative capacity over the last several years.

Beyond mitigating prosecution risks, there are other established benefits to maintaining a robust corporate compliance program that targets bribery and related misconduct. First and foremost, compliance programs protect the company and its employees by ensuring ethical conduct and appropriate business practices. Good compliance also protects investors and reduces corporate waste, as bribes are a diversion of corporate funds and other resources. Moreover, bribery-related misconduct can be indicative of and coexist with other misconduct, including crimes against the company such as embezzlement or fraud. The support of robust compliance programs is prudent protection that may allow earlier detection and remediation of other illegal conduct that can harm companies.

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Corporate Directors, U.S. Securities and Exchange Commission, (Feb. 23, 2005), <https://www.sec.gov/news/speech/spch022305psa.htm#:~:text=Unless%20the%20corporation%20is%20a%20criminal%20enterprise%2C,the%20fraud%20to%20the%20detriment%20of%20other> (“Unless the corporation is a criminal

enterprise, or the shareholders themselves have somehow benefited from the fraud to the detriment of other corporations or the marketplace as a whole, and the fine serves as a disgorgement of ill-gotten profits, fines against shareholders are often not appropriate.”).

¹¹ *Supra* note 8.