

ALERT

New FCPA Head Patrick Stokes: Expect Continued FCPA Emphasis

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During a presentation at the American Bar Association (ABA) White Collar Crime Institute in Miami, new Foreign Corrupt Practices Act (FCPA) unit Deputy Chief Patrick Stokes told attendees that FCPA enforcement will remain a point of emphasis in 2014. The U.S. Department of Justice (DOJ) currently has between 20 and 25 prosecutors dedicated to FCPA enforcement, but is also increasingly looking to local U.S. Attorneys' offices for support investigating and prosecuting these cases.

Acknowledging that he had been in his new position for only about a month, and after making clear he was not speaking on behalf of the department, Stokes made the following key points about FCPA enforcement:

- **DOJ expects to speed-up FCPA investigations:** DOJ recognizes that resolution of cases is taking far too long. DOJ hopes to quicken the pace of FCPA enforcement actions and shorten the lifespan of FCPA investigations.
- **Individual enforcement remains a DOJ priority:** With four trials already scheduled to go forward in 2014, the DOJ expects it will continue to charge high-level executives involved in bribery schemes. The DOJ is of the view that such prosecutions have a strong deterrent effect.
- **DOJ recognizes that the language in their settlement agreements and press releases effectively forms current FCPA jurisprudence:** As courts have yet to weigh in on key portions of the FCPA, companies and individuals must continue to rely on government settlements, opinions, and guidance. DOJ appreciates that it largely shapes FCPA jurisprudence

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through its press releases and resolutions. Accordingly, DOJ intends, consistent with privacy interests of parties, to provide information designed to give companies and counsel a better understanding of their rationale for jurisdiction, settlements, and declinations. At the same time, the DOJ does not intend to issue additional FCPA enforcement guidelines beyond its 2012 guidance, *A Resource Guide to the U.S. Foreign Corrupt Practices Act*.

- **Continued industry-based investigations (just don't call them sweeps!):** DOJ maintains that while it does not conduct "industry sweeps," it does "follow the evidence" which often leads to investigations of several players in the same industry. Moreover, much like in the antitrust space, the target of an investigation will frequently alert DOJ to competitor misconduct.
- **Sources of FCPA investigations vary:** Potential FCPA cases come to the government a number of different ways, including but not limited to: voluntary disclosures, Dodd-Frank whistleblowers, target-specific whistleblowers, and the FCPA inbox. While not "flooded," the DOJ does receive a substantial number of tips and leads. Tips from relators are becoming far more detailed and sophisticated. DOJ pursues all credible allegations.
- **Federal Principles of Prosecution will continue to guide DOJ prosecutorial decisions:** The DOJ relies heavily on the nine factors identified in the Federal Principles of Prosecution when deciding to commence an investigation, charge an individual or company, or issue a declination. However, as each of the factors weigh differently in various circumstances, there is no one-size-fits all approach to prosecutorial decisions.