

April 8, 2025

# FCPA Update: 2024 & Q1 2025 Developments

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# Q1 2025 UPDATES

# AG Bondi Memoranda: Focusing Resources on Cartels / TCOs

Hours after she was sworn in, Attorney General Pamela Bondi issued 14 memoranda, marking a realignment of DOJ policies and enforcement priorities under the Trump Administration.

- DOJ resources are now directed **toward “priority” enforcement areas**, such as immigration enforcement, human trafficking and smuggling, transnational criminal organizations (TCOs) and cartels, and protecting law enforcement personnel.
- DOJ’s FCPA Unit and Money Laundering and Asset Recovery Section instructed to **prioritize cases relating to cartels and TCOs**, and shift resources away from other enforcement.
- The **Foreign Influence Task Force was disbanded**, signaling a reduction in efforts related to foreign influence campaigns and lobbying, limiting charges under FARA to “conduct similar to more traditional espionage.”
- Three **kleptocracy-related programs and the National Security Division’s Corporate Enforcement Unit also disbanded**.

U.S. Attorneys’ Offices given **greater authority to prosecute cartel and TCO cases** without Main Justice oversight. For FCPA cases, USAOs no longer need authorization from the FCPA Unit to pursue FCPA matters relating to cartels or TCOs.

*“The Criminal Division’s Foreign Corrupt Practices Act Unit shall prioritize investigations related to foreign bribery that facilitates the criminal operations of Cartels and TCOs, and shift focus away from investigations and cases that do not involve such a connection. Examples of such cases include bribery of foreign officials to facilitate human smuggling and the trafficking of narcotics and firearms.”*

**Attorney General Pamela Bondi, February 5<sup>th</sup>, 2025, Memo to all DOJ Employees.**

# Executive Order: FCPA Enforcement Pause

On February 10, 2025, President Trump signed an executive order titled **Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security**.

- Concluding the FCPA had been “stretched beyond proper bounds and abused in a manner that harms the interests of the United States,” the Order seeks to “restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives.”

The President’s foreign policy authority is inextricably linked with the global economic competitiveness of American companies. American 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.**

- The accompanying “fact sheet” argues the pause will promote America’s “strategic commercial advantages around the world” and ensure that American companies are not “less competitive” nor “harmed” in international markets by prohibitions on engaging in practices that are “common among international competitors.”

## Core Directives:

- Directs DOJ to **cease initiation of new FCPA investigations or enforcement actions during a 180-day period** (with option to extend another 180 days by Attorney General), unless the Attorney General grants an individual exception.
- After enforcement resumes, new investigations and enforcement actions must follow **revised enforcement guidelines** and be “specifically authorized by the Attorney General.”
- Directs the AG to **review FCPA actions** to “determine whether additional actions, including remedial measures” should be taken.



# FCPA EO Pause: Impact on DOJ Prosecutions

The FCPA Executive Order is beginning to affect previously indicted cases, including:

- **Coburn and Schwartz** (D.N.J.): upon the motion of newly-appointed U.S. Attorney for New Jersey Alina Habba, on April 3, 2025, the District Court **dismissed with prejudice FCPA charges** facing the two ex-Cognizant executives.
  - The dismissal of the February 2019 indictment comes weeks after DOJ represented to the Court that it had completed its review process pursuant to the FCPA Executive Order and was **prepared to proceed to trial**.
  - No explanation was provided for the reversal.
- **Continuances / stays granted in several other pending FCPA cases** to allow time for DOJ's "priority review" pursuant to the FCPA Executive Order:
  - **Hobson** (W.D. Pa.) – case stayed for **6 months** (over DOJ opposition) to allow for FCPA Executive Order review; status conference set for May 2025.
  - **Zaglin et al.** (S.D. Fla.) – trial date continued **~ 4 months**, to August 2025, due to FCPA Executive Order review and unrelated discovery issues; and
  - **Piñate-Martinez et al.** (S.D. Fla.) – extended dispositive motions deadline by **30 days** to allow for FCPA Executive Order-related discussions; trial currently set for October 2025.
- Several other indicted FCPA cases are progressing through pretrial proceedings without a public acknowledgment of the FCPA Executive Order to date, including **Berko** (E.D.N.Y.), **Diallo** (C.D. Cal.), and **Pintado-Garcia** (S.D. Fla.).

# FCPA EO Pause: Impact on DOJ Monitorships

On March 20<sup>th</sup>, 2025, the Department of Justice announced that it was exercising its "sole discretion" to terminate the independent monitorships (FCPA and commodities markets) of Swiss commodity trader **Glencore**. The monitorships ended **15 months earlier** than the original term.

DOJ is currently reviewing existing compliance monitorships (FCPA and non-FCPA), and more terminations could be forthcoming.

## Bloomberg Law White Collar & Criminal Law News

Friday, April 4, 2025

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**DOJ Weighs Getting Rid of a Punishment That Companies Des-  
pise**

# Q1 2025 Updates: DAG Blanche's Memo

A March 25, 2025 internal DOJ memorandum by Deputy Attorney General Todd Blanche has proposed sweeping changes throughout the Department of Justice, including to the Criminal Division, as part of an effort to eliminate “duplicative litigation units” and implement DOGE-related efficiency mandates. Notably, several of the proposed changes, if implemented, would impact FCPA, domestic public corruption, money laundering, and consumer protection enforcement efforts, including potentially:

- Reducing Fraud Section personnel focusing on FCPA matters;
- Reducing personnel in DOJ's Office of International Affairs and those focused on FARA issues within the National Security Division;
- Reassigning personnel working in the DOJ's Public Integrity Unit to U.S. Attorneys' Offices;
- Consolidating the Criminal Division's Money Laundering and Asset Recovery section and a section focused on drugs and narcotics;
- Moving the Consumer Protection Branch from the Civil Division to the Criminal Division.

*The memo remains only a proposal, and affected DOJ components have been given until April 2, 2025, to comment on the impacts on their work. However, the memo is part of the DOJ's implementation of the President's February 11, 2025 Executive Order implementing DOGE and directing workforce reductions across the federal government.*

# Q1 2025 Updates: FCPA Enforcement at the SEC

## SEC Following DOJ's Lead in FCPA Pause

Although the FCPA Executive Order was directed at DOJ, the SEC has confirmed that it will follow the lead of the Justice Department in pausing enforcement of the FCPA. The SEC's Acting Deputy Director has also stated that the SEC will increase declinations for companies that remediate misconduct and cooperate in their investigations.

*“Going forward, we’re going to continue [issuing declinations] and I think we’re going to lean into that even more[...] I think you will see more frequently than in the past administration that we just don’t bring charges at all. We don’t have any way of publicizing that as a declination but I really want to underscore the importance of cooperation for your clients.”*

Antonia Apps, **March 5, 2025 Speech at ABA White Collar Conference**

## Investigation Paused

On February 18, 2025, the SEC notified Calavo Growers that “**activity in the investigation has been postponed,**” following President Trump’s Executive Order pausing FCPA enforcement.

## Key Retirements at the SEC

**Top officials to leave US SEC's anti-bribery unit, sources say**



# Looking Ahead: Key Open Questions to Watch

1. Will the **Coburn / Schwartz dismissal be replicated or distinguished** in other indicted FCPA cases?
  - Will it matter that some of these cases involve **non-FCPA charges (e.g., money laundering)**?
  - Will it matter that some of these cases involve **non-U.S. defendants**?
2. How will **non-U.S. companies** fare under the new FCPA enforcement regime?
  - Selective prosecution based on nationality is unlawful, but FCPA EO suggests **protectionism of U.S. business interests**.
  - Already **8 of top 10** FCPA corporate enforcement actions **involve non-U.S. companies**.
3. What might **remedial measures for past FCPA enforcement actions** include?
  - Was the early-termination of Glencore's monitorship an example of such a "remedial measure," or was it unrelated to the EO?
  - Will DOJ terminate other compliance monitorships (in FCPA and non-FCPA cases) agreed to in prior Administration?
4. Will **other enforcers pick up the "slack"** in foreign corruption prosecutions?
  - California's Attorney General has announced foreign corruption violates state Unfair Competition Law.
  - No signs of reduced enforcement by European and other foreign law enforcement authorities.
5. Will **foreign corruption investigations simply morph** to fit this Administration's priorities?
  - Focus on destabilizing impacts of corruption on foreign regimes and U.S. national security implications.
  - More cases brought under non-FCPA statutes (e.g., money laundering) by U.S. Attorneys Offices.
6. Will DOJ alter relevant **Criminal Division policies and guidance**?
7. Will **tolling agreements / lengthy statute of limitations allow FCPA enforcement to survive** into a new Administration?

# **FCPA STATISTICS AND POLICY RATIONALE**

# **02**

# FCPA Policy Rationale: National Security and Rule of Law

Early actions by the current Administration appear to reflect a shift from the long-held view that robust international anti-corruption enforcement benefits U.S. businesses by creating a level playing field and strengthening the rule of law.

Prior administrations had consistently included combatting corruption in their national security strategies:

George W. Bush Administration (2002)

“[C]orruption can make weak states vulnerable to terrorist networks and drug cartels within their borders.”

Obama Administration (2010)

Corruption is a “severe impediment to development and global security” and a primary vehicles through which TCOs and terrorist organizations accumulate wealth and power.

Biden Administration (2022)

The fight against corruption is a “core national security interest.”

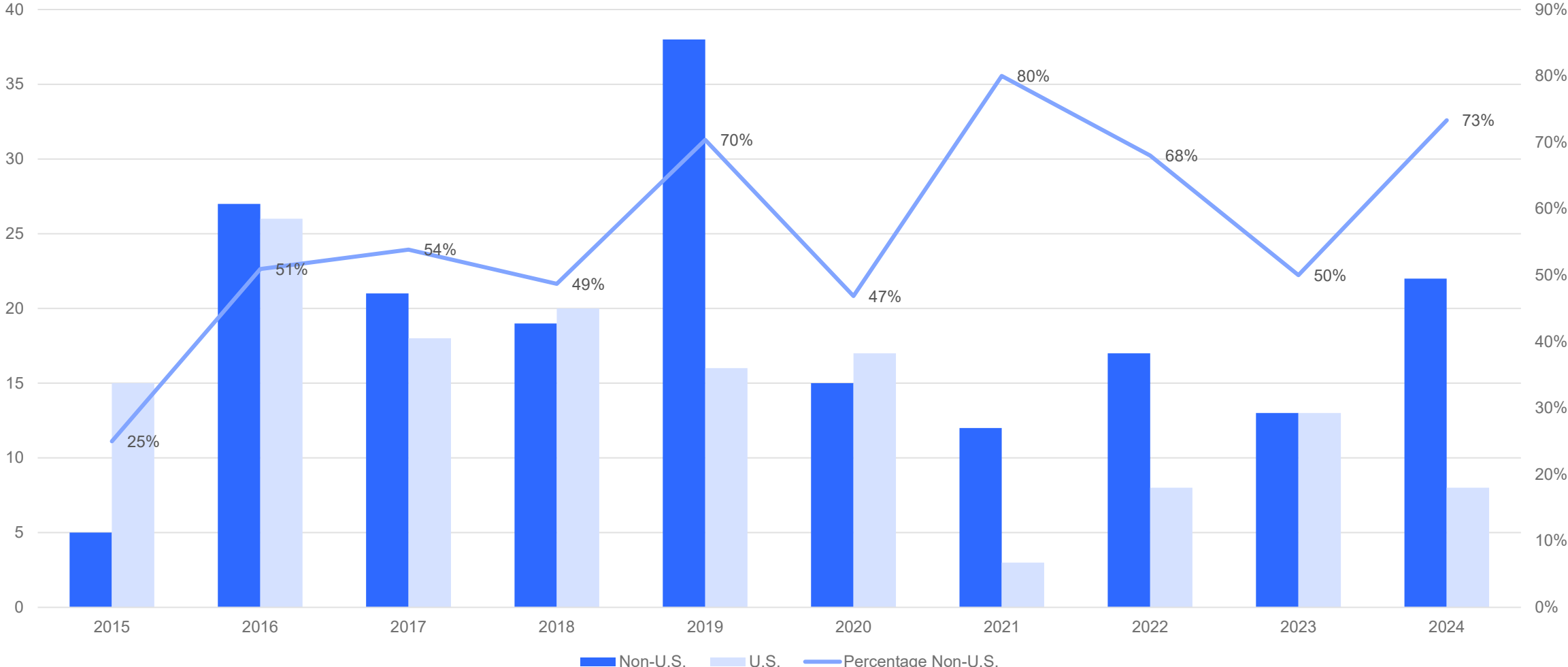
Trump Administration (2017)

“Terrorists and criminals thrive where governments are weak, corruption is rampant, and faith in government institutions is low.”  
Established a priority action to counter foreign corruption by “[u]sing our economic and diplomatic tools . . . to target corrupt foreign officials and work with countries to improve their ability to fight corruption so U.S. companies can compete fairly in transparent business climates.”

The actions also mark a fundamental break with a longstanding bipartisan consensus on the role of the United States in combatting international corruption.

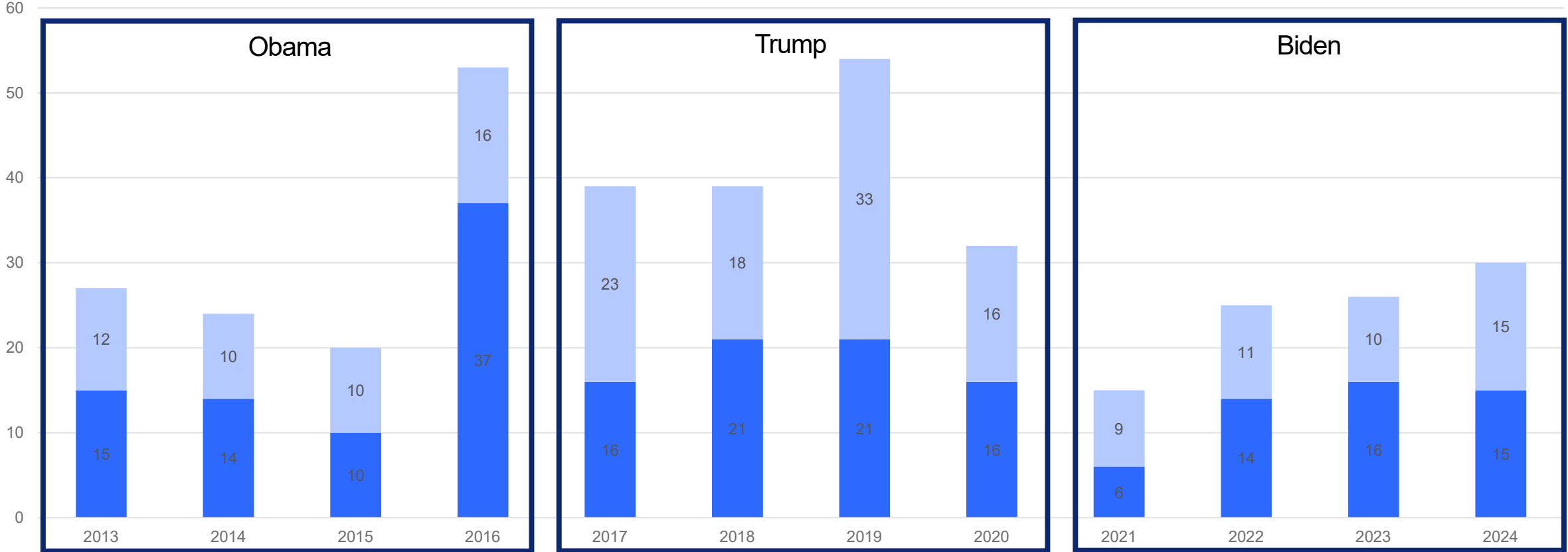
# Most FCPA Enforcement Actions Involve Non-U.S. Defendants

57% Non-U.S. FCPA Defendants Over Past Decade (2015 – 2024)





# FCPA Enforcement Actions – Corporate vs. Individual Defendants by Administration



■ Corporate ■ Individual

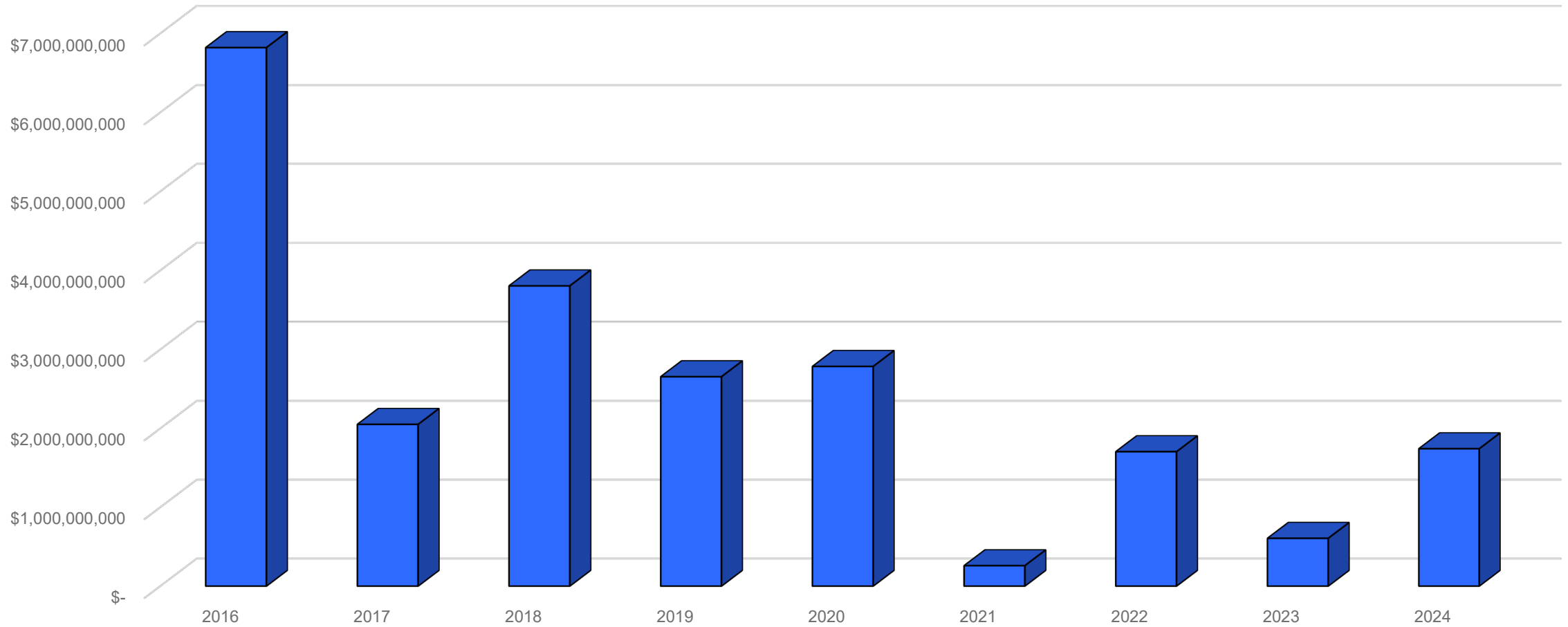
Corporate: 76  
 Individual: 48  
 Total: 124

Corporate: 74  
 Individual: 90  
 Total: 164

Corporate: 51  
 Individual: 45  
 Total: 96

# Total Penalties in FCPA Corporate Enforcement Actions (2016 – 2024)

## Total Corporate Penalties for FCPA Violations



# Top 10 FCPA Corporate Enforcement Actions by U.S. Resolution Amount

Only 2 out of the Top 10 Corporate FCPA Resolutions of all-time involve American companies

No.	Company	Nationality	Total Resolution	DOJ Component	SEC Component	Date
1	Goldman Sachs	United States	\$1,663,088,000	\$1,263,088,000	\$400,000,000	10/22/2020
2	Ericsson	Sweden	\$1,060,570,432	\$520,650,432	\$539,920,000	12/06/2019
3	Mobile TeleSystems	Russia	\$850,000,000	\$750,000,000	\$100,000,000	03/06/2019
4	Siemens	Germany	\$800,000,000	\$450,000,000	\$350,000,000	12/15/2008
5	Alstom	France	\$772,290,000	\$772,290,000	--	12/22/2014
6	Glencore	Switzerland/ United Kingdom	\$700,706,965	\$700,706,965	--	05/24/2022
7	KBR/Halliburton	United States	\$579,000,000	\$402,000,000	\$177,000,000	02/11/2009
8	Teva	Israel	\$519,000,000	\$283,000,000	\$236,000,000	12/22/2016
9	Telia	Sweden	\$483,103,972	\$274,603,972	\$208,500,000	09/21/2017
10	Gunvor	Switzerland	\$474,418,481	\$474,418,481	--	03/01/2024

# Top 10 Anti-Corruption Corporate Enforcement Actions By Global Resolution Amount

Only 1 out of the Top 10 Worldwide Anti-Corruption Resolutions of all-time involve an American company

No.	Company	Nationality	Total Resolution	Enforcement Countries Involved	Date
1	Goldman Sachs	United States	\$4,319,312,000	United States, United Kingdom, Singapore, Hong Kong Goldman Sachs paid additional restitution to Malaysia	10/22/2020
2	Airbus	France	\$3,960,000,000	United States, France, United Kingdom	01/31/2020
3	Odebrecht/Braskem	Brazil	\$3,560,000,000	United States, Brazil, Switzerland	12/21/2016
4	J&F Investimentos	Brazil	\$3,180,000,000	United States, Brazil	05/31/2017
5	Petróleo Brasileiro	Brazil	\$1,786,000,000	United States, Brazil	09/27/2018
6	Siemens	Germany	\$1,600,000,000	United States, Germany	12/15/2008
7	Glencore	Switzerland/ United Kingdom	\$1,500,000,000	United States, United Kingdom, Brazil, Netherlands, Switzerland	05/24/2022
8	Société Générale	France	\$1,300,000,000	United States, France	06/04/2018
9	Ericsson	Sweden	\$1,060,570,432	United States	12/06/2019
10	Telia	Sweden	\$965,603,972	United States, Netherlands, Sweden	09/21/2017

# 2024 FCPA UPDATES

# 2024 Policy and Guidance Updates

# Policy and Guidance Updates: Open Questions

In 2024, under the prior Administration, DOJ updated several Criminal Division policies and guidance documents and introduced new programs, including:

- Pilot programs to incentivize whistleblowers and voluntary self-disclosure;
- The Corporate Enforcement and Voluntary Self-Disclosure Policy (“CEP” or “Corporate Enforcement Policy”); and
- The Evaluation of Corporate Compliance Programs (“ECCP”) guidance.

How the current Administration may apply or alter this guidance remains an open question.

- DOJ is reviewing all existing regulations, including guidance memoranda, for compliance with the Administration’s stated policies and goals.
- Existing policies and guidance – including guidance issued during the first Trump Administration, such as the Evaluation of Corporate Compliance Programs guidance – may revert to earlier versions or evolve into new forms.

# Whistleblower and Self-Disclosure Programs

2024 saw several key changes to voluntary disclosure and whistleblowing programs, including:

- The launch of the Criminal Division **Corporate Whistleblower Awards Pilot Program** in August 2024, providing corporate whistleblowers with monetary rewards if a disclosure ends with forfeiture under certain conditions;
- DOJ Criminal Division's new **Pilot Program on Voluntary Self-Disclosures for Individuals**, which offers NPAs as an incentive for individuals involved in misconduct to self-disclose, subject to certain conditions;

*Will these programs survive DOJ's ongoing review of policies, guidance, and programs, particularly where their statutory basis may be unclear?*

- **Individual whistleblower programs** launched by twelve United States Attorneys' Offices.

*The first Trump administration saw an increased role for USAOs, and individual tip line-type programs with rewards have long been used by law enforcement agencies, even without explicit bases in statutes.*



# Whistleblower Programs: DOJ Criminal Division

Announced in March and launched in August 2024, DOJ Criminal Division's **Corporate Whistleblower Awards Pilot Program** aims to fill the gaps in existing whistleblower programs by providing incentives to whistleblowers not covered by other frameworks (such as those administered by the SEC, CFTC, etc.).

Under this three-year pilot program:

- Whistleblowers are eligible for awards in cases resulting in forfeiture exceeding **\$1 Million**.
- Open to whistleblowers who have “**minimally**” participated or are “**least culpable**” in the scheme.
  - Prohibits awards to individuals who “**meaningfully participated in the criminal activity**,” even if they self-disclose.
- Whistleblowers must provide “**original information**” to the DOJ about cases involving:
  - (1) certain crimes involving financial institutions, from traditional banks to cryptocurrency businesses;
  - (2) foreign corruption involving misconduct by non-issuer companies;
  - (3) domestic corruption involving misconduct by companies; or
  - (4) health care fraud schemes involving private insurance plans.
- Companies can still be eligible for “**voluntary self-disclosure**” credit under the Corporate Enforcement Policy if they disclose the misconduct within 120 days of the whistleblower report.

This new program may create a “race to the DOJ” between corporations and individuals. Thus, corporations should consider:

- Maintaining strong internal controls systems to find and remediate misconduct internally; and
- Strengthening internal reporting tools for employees, third parties, and contractors.

*“Early signs indicate” DOJ’s “newly consistent and transparent programs are working.”*

Principal Associate Deputy  
Attorney General Marshall Miller,  
**August 2024**

# Whistleblower Programs: Criminal Division Individual Self-Disclosure Pilot Program

On April 15, 2024, DOJ's Criminal Division announced its Pilot Program on Voluntary Self-Disclosures for Individuals. This program:

- Specifically targets individuals involved in the misconduct and
- Offers non-prosecution agreements (NPAs) in exchange for **providing original, non-public information** not previously known to the Criminal Division or any DOJ component, subject to certain conditions.

Whistleblowers are **ineligible** if they:

- Engaged in the criminal conduct involving the use of force;
- Serve as the CEO or CFO of a public or private company;
- Organized or led the scheme;
- Serve as a foreign or domestic public official; or
- Have prior felony convictions or convictions for fraud or dishonesty.

**To be eligible individuals must:**

- Make a disclosure to an email address specific to the pilot program;
- Disclose “original information” relating to certain enumerated domestic or international white-collar crimes;
- Disclose voluntarily, in the absence of any DOJ request or inquiry, preexisting legal obligation, or threat of imminent disclosure;
- Be truthful and complete;
- Fully cooperate and provide substantial assistance; and
- Agree to forfeit or disgorge any profit earned from the criminal wrongdoing

# Whistleblower Programs: USAO Pilot Programs

Twelve USAOs have implemented curated whistleblower programs meant to incentivize individuals to self-disclose information about criminal conduct, in exchange for receiving a non-prosecution agreement (NPA).

Each jurisdiction has its own eligibility requirements (and exclusions) and offers different incentives, but in general whistleblowers must provide

- **truthful and complete** original information;
- information that is **not already known** to the USAO or the public; and
- **aid** with the USAO's investigation and agree to **forfeit or disgorge** any ill-gotten gains from the conduct

## Examples of Differences Between Jurisdictions:

- Northern District of Illinois reserves the right to withhold the NPA even where an individual has satisfied all eligibility requirements;
- Eastern District of New York does not specifically exclude violations of the FCPA (all others specifically exclude FCPA violations); and
- Southern District of New York implies that an individual that meets all the eligibility criteria will receive an NPA and states that the USAO may exercise its discretion to extend an NPA even if a condition is not met.

# Corporate Enforcement Policy

Under the current CEP, DOJ may grant up to a **50% discount from the criminal fine** for cooperation and remediation in a case that was not self-disclosed by the defendant company, and up to a **75% discount** if the matter qualifies as a voluntary self-disclosure but nonetheless warrants criminal prosecution (and not a “declination with disgorgement”).

- “Perfect scores” on discounts for cooperation or voluntary self-disclosure have yet to happen. Discounts have ranged from **as low as 10% to as high as 45%, with differing starting points** within the U.S. Sentencing Guidelines range.
- In announcing the CEP, DOJ made clear that the maximum-available discount is not the default, and that companies will start from zero and have to build the case for a discount based on their cooperation and remediation. Whether the discount is taken from the bottom of the Guidelines range or from a higher point of departure has made a significant difference in the **effective discount** a defendant receives.



In late 2024, DOJ announced in a blog post several enhancements to the CEP, including: (i) significant benefits for a good-faith self-disclosure to DOJ, even if the disclosure does not technically qualify as a “voluntary self-disclosure” under the CEP; (ii) to qualify as a “voluntary self-disclosure,” the company must disclose “original” information of which DOJ was not previously aware; and (iii) a company that voluntarily self-discloses can receive a presumption of a declination even if it earned “significant profit” from the misconduct.

**These efforts to fine tune corporate credit for cooperation, remediation, and self-disclosure may also be reconsidered as part of DOJ’s ongoing review.**

# Evaluation of Corporate Compliance Programs 2024 Revisions

On September 23, 2024, DOJ's Criminal Division revised the Evaluation of Corporate Compliance Programs (ECCP) guidance to reflect emerging challenges in corporate compliance.

The revisions include four significant updates intended to account for **changing circumstances and new risks**, including “**disruptive technology risks**”:

1. Focus on Technology/Artificial Intelligence Risk Mitigation,
2. Leveraging Company Data for Compliance,
3. Expanded Whistleblower Protection and Encouragement, and
4. Evaluating Companies' Compliance Track Records.

It is unclear how DOJ's ongoing review may impact these updates or the ECCP generally. **Nonetheless, for companies looking to enhance their compliance programs, the ECCP remains the gold standard on what makes a compliance program effective.**

*“[P]rosecutors will consider whether the company is vulnerable to **criminal schemes enabled by new technology**, such as false approvals and documentation generated by AI. If so, we will consider whether **compliance controls and tools are in place to identify and mitigate those risks** . . . . [and] whether the company is **monitoring and testing its technology**....”*

DAAG Nicole Argentieri, **September 2024**

# 2024 Enforcement Action Updates & Trends







# 3B

# 2024 Enforcement Actions: Key Takeaways

Notable takeaways from 2024's FCPA enforcement actions include:






1. Subsidiary-only resolutions with parent company obligations;
2. Further clarity around the poles in Corporate Enforcement Policy credit;
3. Individual FCPA enforcement actions came in bunches; and
4. DOJ's FCPA Unit went four-for-four at trial.

# 2024 Corporate Enforcement Actions: Overview (1 of 2)

Date	Company	Enforcer(s)	Resolution Amount	Form of Resolution	Key Aspects of the Resolution
1/10/24		DOJ SEC	\$222 million \$99 million	3-year DPA C&D Order	Received credit for compensation withholding from culpable parties; enhanced USSG point-of-departure for prior FCPA resolution
3/1/24		DOJ	\$661 million	Guilty Plea	Enhanced USSG point-of-departure due to prior corruption resolution with Swiss authorities
3/28/24		DOJ	\$127 million	Guilty Plea	Reduced CEP discount due to delays in cooperation/remediation, negotiation position; enhanced USSG point-of-departure for prior plea
8/24/24		DOJ	\$14 million	Declination with Disgorgement	Received full credit for prompt voluntary disclosure and cooperation, as well as remediation, including equity/bonus clawbacks.
9/10/24		SEC	\$10 million	C&D Order	No criminal resolution
10/11/24		SEC	\$2 million	C&D Order	Voluntary self-disclosure; no criminal resolution



## 2024 Corporate Enforcement Actions: Overview (2 of 2)

Date	Company	Enforcer(s)	Resolution Amount	Form of Resolution	Key Aspects of the Resolution
10/16/24		DOJ SEC	\$267 million \$135 million	3-year DPA with Subsidiary and Monitor / C&D Order	Parent signed on to subsidiary resolution for compliance obligations; parallel resolutions reached to resolve defense contract pricing and False Claims Act allegations.
11/8/24		DOJ	\$85 million	3-year DPA with Subsidiary	Parent signed on to subsidiary resolution for compliance obligations; issuer parent did not reach parallel resolution with SEC.
11/18/24		DOJ SEC	\$10 million* \$4 million	3-year DPA C&D Order	*Penalties reduced to \$10 million in aggregate, due to “inability to pay.”
12/5/24		DOJ	\$123 million	3-year DPA with Subsidiary	Parent signed on to subsidiary resolution for compliance obligations; parent reached opioid-related criminal resolution 10 days later.
12/9/24		DOJ SEC	\$45 million \$29 million	18-Month NPA with Parent C&D Order	“Significant weight” in CEP discount given to “imperfect self-disclosure,” whereby AAR voluntarily reported to DOJ/SEC only after press reports and a report by an independent source.

# 2024 DOJ Corporate Enforcement Policy Discounts

Company	Date	Resolution Type	Criminal Fine	CEP Discount	Guidelines Point of Departure	Minimum USSG Fine	Savings (Min USSG Fine - Criminal Fine)	Effective CEP Discount (Savings as % of Min USSG Fine)
SAP SE	01/10/2024	DPA	\$118,800,000	40%	10th percentile	\$180,000,000	\$61,200,000	34%
Gunvor S.A.	03/01/2024	Guilty Plea	\$374,560,071	25%	30th percentile	\$384,164,176	\$9,604,105	2.5%
Trafigura Beheer B.V.	03/29/2024	Guilty Plea	\$80,488,040	10%	5th percentile	\$85,172,530	\$4,684,490	5.5%
Raytheon Co.	10/16/2024	DPA	\$230,400,000	20%	20th percentile	\$240,000,000	\$9,600,000	4%
Telefónica Venezolana C.A.	11/08/2024	DPA	\$85,260,000	20%	5th percentile	\$101,500,000	\$16,240,000	16%
BIT Mining Ltd.*	11/18/2024	DPA	\$54,000,000	10%	Bottom	\$60,000,000	\$6,000,000	10%
McKinsey & Co. Africa (Pty) Ltd	12/05/2024	DPA	\$122,850,000	35%	5th percentile	\$180,000,000	\$57,150,000	32%
AAR CORP.	12/19/2024	NPA	\$26,363,029	45%	Bottom	\$48,017,325	\$21,654,296	45%

\*BIT Mining's criminal fine was reduced to \$10 million based on a demonstrated inability to pay the fine amount.

# Subsidiary- Only FCPA Resolutions

Traditionally, FCPA resolutions involved the subsidiary “most involved” in the conduct pleading guilty, with the parent company often entering into a DPA/NPA to settle the investigation where there was evidence of parent company knowledge or involvement.

- This has often resulted in at least some form of criminal resolution with the parent entity in FCPA matters, even where the misconduct was principally concentrated in subsidiaries.
- Absent such parent company knowledge or involvement, in some cases, DOJ requires a parent company to sign on to certain terms of its subsidiary’s resolution.
  - Examples include the 2019 NPAs by Microsoft Hungary and JPMorgan Securities (Asia Pacific) Limited, and resolutions by certain Hewlett Packard subsidiaries in 2014.

In 2024, fully **one-third** of FCPA corporate criminal prosecutions did not involve a parent-level defendant yet parent companies still signed on to certain provisions in the agreements, such as the compliance and reporting obligations, even where the subsidiary’s misconduct was undetected by the parent company:

- *McKinsey & Company Africa (Pty) Ltd;*
- *Telefónica Venezolana C.A;* and
- *Raytheon Company.*

# FCPA Individual Enforcement Actions in 2024

Individual accountability has long been a focus of senior leadership at both DOJ and the SEC, with respect to the FCPA and enforcement more broadly—with DOJ bringing far more individual than corporate prosecutions recently.

## The year in stats:

- In 2024, 70% (21 of 30) of FCPA or FCPA-related enforcement actions brought by DOJ were against individuals;
- Many of these enforcement actions represent groupings wherein multiple individuals (up to 8) were charged all at once or in related investigations;
- In 2024, 40% of the SEC's FCPA or FCPA related enforcement cases (4 out of 10) were against individuals;
- At trial, DOJ went **four-for-four** in their cases against individuals in 2024.

# Individual Defendant Key Case: *Adani* *Group Eight*

SEC and DOJ announced parallel charges arising from an alleged \$250 million bribery scheme involving one of the world's largest solar energy projects and one of the world's richest men.

- Defendants include Indian billionaire ***Gautam Adani***, his nephew ***Sagar Adani***, and ***Vneet Jaain***, all executives at Indian renewable energy company Adani Green Energy, as well as ***Ranjit Gupta*** and ***Rupesh Agarwal***, former executives of U.S. issuer Azure Power, and ***Cyril Cabanes***, ***Saurabh Agarwal***, and ***Deepak Malhotra***, former employees of Canadian pension fund CDPQ (as well as in Cabanes's case, a former board member of Azure Power).
- Defendants are alleged to have initiated a scheme in 2021 to allegedly pay \$265 million in bribes to officials of the Solar Energy Corporation of India to cause local Indian municipalities to purchase power from a multi-billion dollar, 12 GW solar energy project operated by the defendants' companies. DOJ and the SEC further allege that certain of the defendants obstructed justice by lying to investigators and destroying documents, as well as made false statements to U.S. investors in connection with capital raising efforts occurring after news of the investigation became public.
- None of the defendants have appeared yet before the court in the Eastern District of New York, where the criminal and civil charges have been filed, and raises a question as to whether India will agree to extradite these prominent businessmen (or whether the Trump Administration will even request extradition in light of the FCPA Executive Order).

## FCPA suspension may delay legal action against *Adani Group* in US: Experts

Relief to Adani? Trump pauses enforcement of  
foreign bribery law

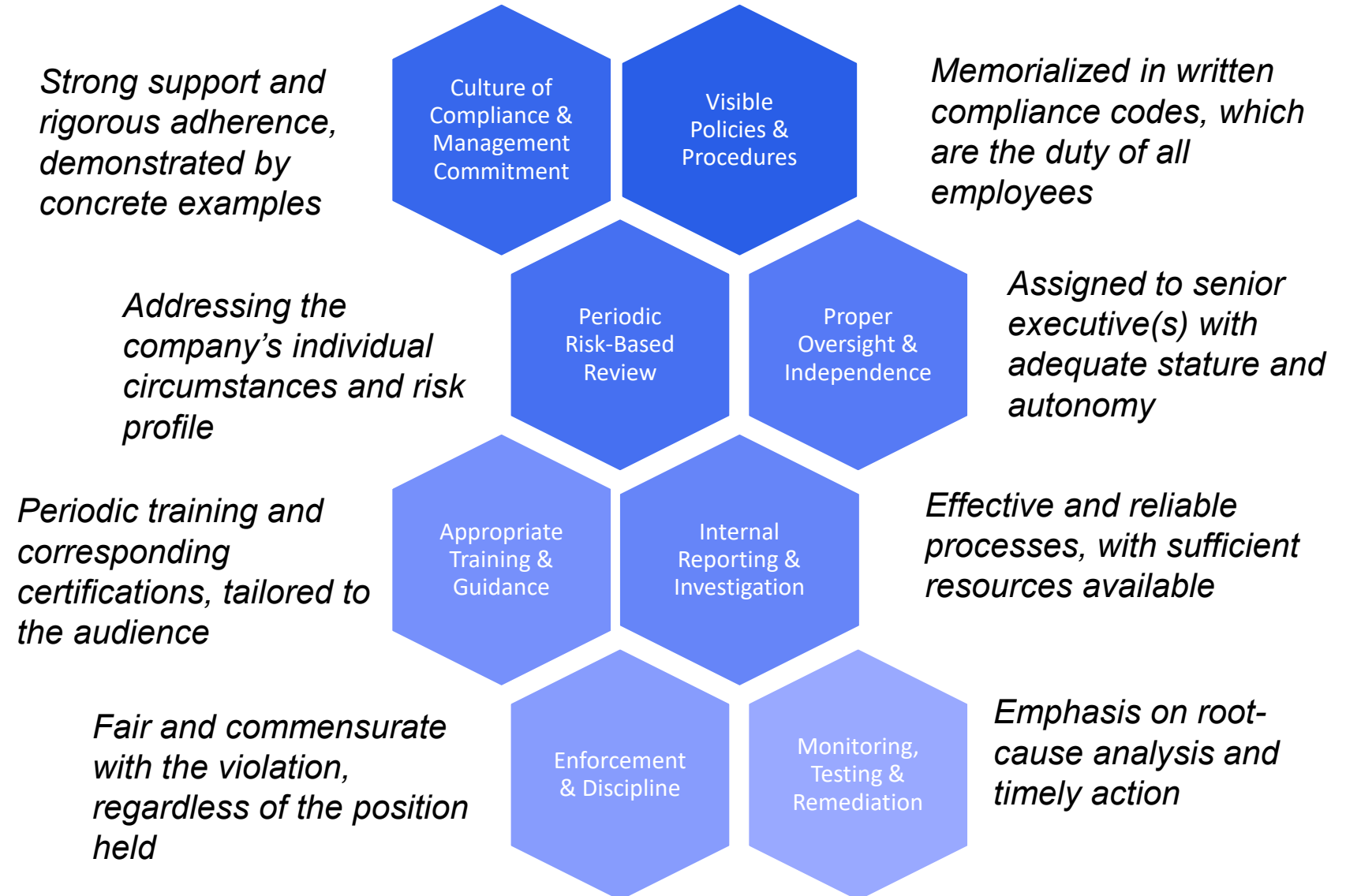
# **COMPLIANCE PROGRAM BEST PRACTICES**

**04**

# Compliance Programs Overview

## DOJ's Modified Attachment C

### *Stricter Expectations for the Corporate Compliance Program*



# Well-Developed and Regularly Tested Risk-Based Compliance Programs

- In legislation, regulations, and enforcement decisions, authorities continue to increasingly emphasize the need for a **well-developed risk-based compliance program that is regularly tested, updated, and supported by sufficient resources.**
- Compliance programs should account for **global anti-corruption standards**, not just the FCPA.
- As recent U.S. enforcement actions show, **authorities will not credit companies for having internal controls if they are easily circumvented.** On the other hand, they have shown a willingness to credit the state of a compliance program after remediation following the discovery of misconduct.
- FCPA enforcement actions have also highlighted **the importance of Internal Audit and effective coordination between Internal Audit, Legal, and Compliance.**
  - Consider implementing best practices for a working relationship between internal audit, legal, and compliance.
  - Include compliance- and corruption-related areas in audit cycles.



# Importance of Timely and Complete Remediation

- DOJ and SEC regularly request and review **audit reports and internal and independent assessments**.
  - Establish guidelines to keep reports strictly factual with precise wording.
  - Ensure that remedial steps are practical and workable, and there is a process to follow through on action items.
  - Have guidelines for when to involve Legal and properly label privileged and confidential documents.
- Recent enforcement actions emphasize the need for companies to **fully address compliance red flags, risks, and recommendations flagged** by auditors, due diligence, complaints, and other credible sources. Decisions to reject such findings or recommendations should be well-supported and fully documented.
- Government officials increasingly expect that compliance programs will be supported by **updated technology and automation**, with particular emphasis recently on the use of **data analytics for monitoring and testing a compliance program**.

# Importance of Updated Risk Assessments

- Having a **properly developed risk assessment that is regularly updated is the backbone of an effective and efficient compliance program.**
- A **documented risk assessment procedure** should detail steps to review existing data, gather additional information, and analyze and report findings on a regular cadence.
  - **Sources of information should be broad across operations and jurisdictions.** They may include interviews, visits, surveys, due diligence files, audit reports, complaints, transaction data, compliance program testing and monitoring results.
  - However, more information may be sought for higher risk areas, in accordance with a risk-based approach.
- Compliance program policies, procedures, and controls should be designed and updated based on **risk assessment** findings.

# Third Parties as Greatest FCPA Risk Factor

All but one of the 2024 FCPA resolutions involved corrupt payments made through third parties.

- **Third parties**—such as intermediaries, individuals and shell companies, agents, offshore entities, and distributors—**continue to pose the greatest FCPA risk** and feature in enforcement actions.
  - Higher-risk third parties include those interacting with government officials, distributors and resellers, and business development agents.
  - Other high-risk scenarios include: commission-based compensation; handling licensing, permits, or customs formalities; operating in jurisdictions at high risk for corruption; and engagement of subcontractors.
- **Pre-engagement diligence, compliance contract provisions, and close monitoring** can help offset the decreased transparency and control that comes with agents and intermediaries.
- Albemarle's resolution did not include the imposition of a monitor because, in part, the company **significantly reduced its use of third parties**.

# Carefully Monitor High-Risk Third Parties

## Use of third parties is an inevitable part of doing business in an emerging market.

Pre-engagement screening, as well as close monitoring, can help offset the decreased transparency and control that comes with using agents and intermediaries.

- Identify the specific functions *prone to corruption* that are handled by third parties.
- Involve *Legal and Compliance* in contract negotiations and drafting to ensure that services are specifically and accurately described.
- Establish an efficient control (e.g., Finance) that can assess whether the services have actually been rendered and whether prices are reasonable in light of those services and in line with market rates.
- Ensure that *rebates, credit notes, and other payments* provided to the third party are made to the contracting entity, including identifying any offshore arrangements.
- Understand whether discounts or profit margins of intermediaries are *passed on* to end-customers by reviewing publicly available tender materials or conducting audit reviews.
- Conduct *function-specific training* for employees working with third parties and with end customers.
- Include *audit rights* in third-party agreements.
- Use a risk-based approach to periodically select third parties for an *audit review*.

# Overview of M&A Compliance Due Diligence Steps



# Awards and Accolades: Recent Firm Recognitions



Gibson, Dunn & Crutcher LLP

## Chambers Global: The World's Leading Lawyers for Business 2025

Gibson Dunn recognized globally and in the Asia-Pacific, Europe, Latin America and Middle East regions.



Gibson, Dunn & Crutcher LLP

## Chambers USA: America's Leading Lawyers for Business 2024

Gibson Dunn awarded 362 total rankings, which included 112 first-tier rankings.



## The American Lawyer

Gibson Dunn awarded Litigation Dept. of the Year – Unprecedented four-time winner of the most coveted, biannual U.S. litigation award.



## The American Lawyer 2024

Gibson Dunn ranked on its 2024 A-List of the 20 most elite law firms in the United States.



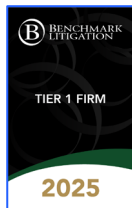
## Global Investigations Review 2024

Gibson Dunn ranked No. 1 in its 2024 GIR 30, its "annual ranking of the 30 best law firms for cross-border corporate investigations" for the seventh consecutive year, and this is the firm's eighth No. 1 ranking in the past nine years.



## The Legal 500 2024 / 2025

Gibson Dunn recognized in its Asia Pacific, EMEA, Germany, Latin America, United States and UK guides



## Benchmark Litigation 2025

Honored Gibson Dunn with its highest recommendations for the firm's litigation practices in California, New York, Texas and Washington, D.C.



## Law360 2024

Gibson Dunn was recognized among the Practice Groups of the Year in Appellate, Competition, Cybersecurity & Privacy, Employment, Environmental, International Arbitration, Real Estate, Securities, Trials & White Collar. The publication's Practice Groups of the Year recognition honors the teams behind litigation wins and major deals that resonated throughout the industry this past year



## IFLR1000 2024

A guide to the world's leading financial law firms, recognized Gibson Dunn in the U.S. and internationally across the Asia-Pacific, Middle East and Western Europe regions. The firm was ranked in 13 national U.S. categories including: Banking, Capital Markets, Financial Services Regulatory, M&A, Private Equity, Project Finance and Restructuring.

# Our Global Footprint



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Palo Alto  
San Francisco  
Washington, D.C.

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London  
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Paris

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