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Client Alert: U.S. Department of Justice Announces Enhanced Enforcement Strategy, Including Pilot Program for Self-Reporting of Potential FCPA Violations

On April 5, 2016, the U.S. Department of Justice (the “DOJ”), Fraud Section released *The Fraud Section’s Foreign Corrupt Practices Act Enforcement Plan and Guidance* (the “Guidance”), which outlines what the DOJ describes as an “enhanced enforcement strategy” and includes details on a new DOJ program designed to encourage corporations to disclose voluntarily their potential violations of the U.S. Foreign Corrupt Practices Act (the “FCPA”).

The Guidance sets forth the following “three steps” to the “enhanced enforcement strategy”:

- 1) The DOJ will boost its FCPA law enforcement resources by increasing the number of prosecutors in the FCPA Unit by “more than 50%” (in support of these efforts, the Federal Bureau of Investigation has itself established three new squads of special agents focused on FCPA investigations and prosecutions);
- 2) The DOJ will engage in greater cooperation with foreign law enforcement agencies in order to combat global corruption and bribery schemes more effectively; and
- 3) The DOJ will create and implement a new pilot cooperation program (the “Pilot Program”) to motivate corporations to self-disclose potential FCPA violations.

Of the “three steps,” the Pilot Program is the only one to involve direct engagement with corporations by establishing and promoting a structured channel for dialogue with the DOJ and defining opportunities for mitigation of enforcement penalties for FCPA-related misconduct. While the concept of mitigation credit for disclosure, cooperation and remediation is an established element of DOJ FCPA enforcement practice, the Pilot Program institutes a more formal and transparent procedure for

corporations to qualify and avail themselves of such credit. Specifically, under the Pilot Program, the DOJ will provide enhanced mitigation credit to corporations that take the following actions:

- Promptly disclose the potential FCPA violation to the DOJ;
- Fully cooperate with the DOJ's investigation of the potential FCPA violation (cooperation must be "proactive" and fulsome); and
- Implement timely and appropriate remedial measures (remediation must include improvements to internal compliance protocols and discipline of culpable employees).

Where a corporation qualifies for the enhanced mitigation credit under the Pilot Program: (i) the DOJ may reduce by 50% the bottom-end of the otherwise-applicable sentencing guideline fine range; (ii) the DOJ generally will not appoint a monitor if the corporation has implemented an effective compliance program; and (iii) the DOJ will consider declining prosecution altogether. By making such significant elements of relief available to qualified corporations, the Pilot Program promises to provide a strong incentive for voluntary disclosure, remediation and cooperation with respect to potential FCPA violations, particularly given the DOJ's stated plans and objectives to strengthen enforcement operations as generally provided under the Guidance. The Guidance notes that the Pilot Program will run for one year from inception. At the end of the one-year term, the Pilot Program will be evaluated by the DOJ to determine whether it will be extended and/or modified.

This Client Alert is not comprehensive as to the full scope of the Guidance and is only a general summary of certain key elements thereof. Please contact us with any questions or concerns or for further information regarding the Guidance.

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