

October 1, 2018

DOJ Extends FCPA Corporate Enforcement Policy
Principles to Non-FCPA Misconduct Discovered in the M&A Context

In an important speech, Deputy Assistant Attorney General Matthew Miner of the Department of Justice's Criminal Division [announced](#) on Thursday that DOJ will "look to" the principles of the [FCPA Corporate Enforcement Policy](#) in evaluating "other types of potential wrongdoing, not just FCPA violations" that are uncovered in connection with mergers and acquisitions. As a result, when an acquiring company identifies misconduct through pre-transaction due diligence or post-transaction integration, and then self-reports the relevant conduct, DOJ is now more likely to decline to prosecute if the company fully cooperates, remediates in a complete and timely fashion, and disgorges any ill-gotten gains.

This announcement marks the latest incremental expansion of DOJ's application of its FCPA Corporate Enforcement Policy. As we have previously noted, in March 2018, DOJ announced that it would begin using its FCPA Policy as "nonbinding guidance" in all Criminal Division corporate matters, not just those involving violations of the FCPA. And in July 2018, DOJ [highlighted](#) that the FCPA Policy applies to potential FCPA violations discovered in connection with mergers and acquisitions. Now, DOJ has completed the circle by clarifying that it will follow the principles of the FCPA Policy as to FCPA and non-FCPA misconduct identified in the context of mergers and acquisitions.

In our March 2018 [memo](#), we suggested that it would be wise for DOJ to apply the FCPA Policy to all corporate investigations. With this week's announcement, DOJ has taken an important step in that direction. As we have long counseled, acquirors should engage in careful pre-acquisition due diligence and effective post-closing compliance integration. Doing so will place acquiring companies in the best position to take advantage of DOJ's enforcement approach in appropriate cases where misconduct is uncovered.

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