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Executives in Crosshairs for Corporate Violations

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A new U.S. Department of Justice policy expands expectations for corporate cooperation in white collar investigations in ways that have profound implications for SEC-regulated entities such as broker dealers, investment advisers, and others in the securities industry. This new policy:

- creates additional obstacles for any company attempting to resolve cases with the DOJ;
- places increased pressure on companies to develop and present evidence of wrongdoing by senior executives and other employees in order to get credit for cooperation; and
- puts additional pressure on prosecutors to charge individuals and thereby increase the exposure of corporate executives to government scrutiny.

While it remains to be seen how this new policy, issued in memo form by Deputy Attorney General Sally Q. Yates on September 9, 2015, will play out, it is certain that SEC-regulated entities should be mindful of it and pay close attention to its application as the DOJ and the SEC implement it. Policy changes include the following:

- To be eligible for any cooperation credit, corporations must provide to the DOJ all relevant facts about the individuals involved in corporate misconduct.
- Both criminal and civil corporate investigations by the government should focus on individuals from the inception of the investigation.
- Criminal and civil attorneys handling corporate investigations for the government should be in routine communication with one another and in most cases should discuss civil referrals when a prosecutor decides not to pursue a criminal case.
- Absent extraordinary circumstances, no corporate resolution of alleged illegality will provide protection from criminal or civil liability for any individuals involved.

- Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires, and the reasons for any declinations to pursue individuals in such cases must be memorialized.

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