



## DOJ's New Policy Against Corporate Fraud

*Hinckley Allen White Collar Defense & Government Investigation Alert*

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On September 9, 2015, the U. S. Department of Justice announced a new mandate that will potentially affect criminal and civil investigations and prosecutions across all industries. Specifically, Deputy Attorney General Sally Yates issued a memo (“Yates Memo”) stating that the Justice Department is now going to focus its efforts and resources on, and hold accountable, individual executives in its continuing fight against corporate fraud. The Yates Memo, formally titled, “Individual Accountability for Corporate Wrongdoing,” also stated that corporations are expected to cooperate in the Justice Department’s efforts to hold executives accountable and that there will be adverse consequences for failing to do so. Accordingly, the Yates Memo affects both individuals and corporations.

The Yates Memo included these key points:

- Corporations “must” provide all relevant facts to the Department about individuals involved in misconduct, if the corporation wants to be eligible for any cooperation credit (emphasis in the original). The memo went on to state, “If a company seeking cooperation credit declines to learn of such facts or to provide the Department with complete factual information about individual wrongdoers, its cooperation will not be considered a mitigating factor....” Essentially, this means that if a corporation hopes to receive favorable consideration in trying to resolve a matter, it must provide full and complete information regarding individual wrongdoing, and it must affirmatively attempt to learn of any such individual wrongdoing to then convey to the government.
- In addition to expecting corporate cooperation to identify individual wrongdoing, the Yates Memo directed Department attorneys to “focus on individuals from the inception of the investigation” and “proactively investigat[e] individuals at every step of the process – before, during, and after any corporate cooperation.”
- The Yates Memo applies to, and emphasized the importance of, civil investigations in

addition to criminal ones. In fact, the Yates Memo specifically encouraged civil Justice Department attorneys and criminal Justice Department prosecutors to be in “early and regular communication.” Similarly, the Yates Memo urges civil Justice Department attorneys to “consistently focus on individuals as well as the company.” Simultaneous investigations by criminal and civil attorneys must be carefully navigated because decisions made with respect to one could have repercussions in the other.

As with any Justice Department policy, how it will play out at Main Justice in Washington, DC, and throughout the U. S. Attorneys’ Offices nationwide, is yet to be seen. However, this policy was the result of a Justice Department working group convened for the very purpose of identifying ways in which the Justice Department could “fully leverage its resources to identify culpable individuals at all levels in corporate cases” and implement “policies and practices in order to most effectively pursue the individuals responsible for corporate wrongs.”

We have observed that these memos and directives typically lead to a significant increase in investigations and prosecutions. In fact, the day after issuing her memo, Deputy Attorney General Yates, in a speech at New York University Law School, re-affirmed the Justice Department’s commitment to aggressively investigate and prosecute individuals: “[R]egardless of how challenging it may be to make a case against individuals in a corporate fraud case, it’s our responsibility at the Department of Justice to overcome these challenges and do everything we can to develop the evidence and bring these cases.” In that same speech, Yates confirmed the Justice Department’s expectation of corporate cooperation: “The rules have just changed. Effective today, if a company wants any consideration for its cooperation, it must give up the individuals, no matter where they sit within the company. And we’re not going to let corporations plead ignorance. If they don’t know who is responsible, they will need to find out. If they want any cooperation credit, they will need to investigate and identify the responsible parties, then provide all non-privileged evidence implicating those individuals.”

Hinckley Allen’s Government Investigations and White Collar Defense group is highly qualified to handle both corporate and individual representations in all government investigations and prosecutions, as well as conduct internal investigations. Two of our partners, Michael Connolly and Mike Koenig, are former federal prosecutors who, along with the rest of our Government Investigations and White Collar Defense team, have vast experience representing and defending corporate and individual clients across all industries.

If you have any questions, please do not hesitate to contact your Hinckley Allen

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