

KIRKLAND ALERT

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United States Attorney General Pledges Unprecedented DOJ Focus on Financial Fraud

In a January 8, 2010 speech in West Palm Beach, Florida — described in the speech as “ground zero” for Bernard Madoff’s \$65-billion Ponzi scheme — U.S. Attorney General Eric Holder labeled financial fraud “one of the most glaring threats” facing the U.S. economy. Attorney General Holder drew further on national security and terrorism themes to emphasize the priority the Department of Justice will give to investigating and prosecuting financial fraud. He asserted that these efforts are an essential aspect of protecting the national security. He further explained that in this endeavor, “[t]he Department of Justice, working in concert with the White House and a network of government agencies, will use every tool at our disposal — including new resources, advanced technologies and communications capabilities, and the very best talent we have — to prevent, prosecute and punish financial fraud.”

Attorney General Holder’s speech is the latest sign that the Obama Administration and Congress have emphasized the broad category of corporate and financial fraud as a major priority for federal law enforcement, endowing enforcement agencies with increased budgets, new authorities, and a political mandate to investigate and prosecute alleged financial crimes in the corporate marketplace. This emphasis on prosecuting financial fraud is not entirely novel, of course; there were substantial financial fraud enforcement actions in the last Administration, particularly in the areas of mortgage fraud, international organized crime, and securities fraud at entities such as Enron and WorldCom. However, the increasing focus on enforcement actions against financial actors — whether under fraud, antitrust, or administrative securities fraud theories — merits the close attention of American corporate leaders.

As Attorney General Holder noted in his speech, the Department of Justice’s renewed focus on financial crime was already evident in 2009, a year in which the Justice Department secured over 450 convictions of individual defendants in corporate and securities fraud prosecutions. In fact, the current Administration’s concentration on alleged financial crimes is consistent with a trend over the last several years, (detailed in prior Client Alerts including [DOJ Vows to Scrutinize Pharmaceutical Companies under the FCPA](#), [The Fraud Enforcement and Recovery Act of 2009](#), and [Department of Justice Announces That Antitrust Division Will Begin More Aggressive Antitrust Enforcement Campaign](#)), toward heightened enforcement under laws such as the Foreign Corrupt Practices Act (FCPA) and, also, increasingly, under the Sherman Antitrust Act. Attorney General Holder also noted that DOJ currently has over 5,000 pending Financial Institution Fraud cases.

In his speech, Attorney General Holder emphasized that “[w]e cannot ignore the fact that protecting our economy is an essential component of our larger security goals.” He added that “threats to our economic system must be addressed with the same seriousness and sense of purpose that guide our [DOJ’s] efforts to protect the American people” in the national security area. The Attorney General stated that “one of the greatest and most glaring threats facing our economy is the presence of financial fraud, particularly in our securities and financial markets,” and he highlighted that increased congressional funding will “allow for additional FBI agents, prosecutors and support staff to aggressively pursue mortgage fraud, corporate fraud and other economic crimes.”

Although heightened enforcement has been part of the white-collar landscape for several years, Attorney General Holder’s recent statements suggest that the Attorney General views investigation and prosecution of corpo-

rate crime as an integral component of maintaining the national security. DOJ's ability to combat financial crime has recently been enhanced by major increases in congressional funding for DOJ's corporate fraud prosecution programs, and by the increased investigative and prosecutorial powers granted to the Justice Department under the Fraud Enforcement and Recovery Act of 2009.

Attorney General Holder outlined four "key types" of financial fraud that will be the focus of DOJ's new enforcement initiative: mortgage fraud; securities fraud; Recovery Act fraud (*i.e.*, theft or misuse of stimulus funds); and financial discrimination against groups or individuals. He made clear that each of these categories will be interpreted broadly, to include both "simple" schemes, such as "flipping" houses and insider trading, and more abstract offenses, such as "systemic lending fraud" and corporate "misrepresentations to investors."

Attorney General Holder's speech is another clear sig-

nal that DOJ has both the increased resources and the political mandate to aggressively pursue investigations and prosecutions of alleged corporate and financial crimes. Further, DOJ will interpret this mission to cover a wide range of activities, the contours of which are broad but have yet to be fully defined. Companies must be aware of an increasing likelihood that their practices may be called into question by federal investigators. Even business practices that have been accepted as legal and appropriate in previous years may come under new scrutiny, as explained in prior client alerts concerning, for example, recent DOJ antitrust enforcement policies. Companies should also note that DOJ may now be more likely to investigate leads or complaints from non-government sources such as employees, customers, or industry competitors. Finally, companies should scrutinize their current operations and compliance controls and training and should consult counsel (whether in-house or outside counsel) immediately if they become aware of potential wrongdoing or to enhance existing controls and training.

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