JUSTICE NEWS

Deputy Attorney General Sally Quillian Yates Delivers Remarks at American Banking Association and American Bar Association Money Laundering Enforcement Conference

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Remarks as prepared for delivery

Thank you, Buddy [Wilmer Parker], for that kind introduction. I also want to thank the American Bankers Association (ABA) and the American Bar Association (ABA) for organizing this important conference and for everything they do to advance the highest values of their respective professions.

Before we begin, I'd like to say a few words about Friday's horrific attacks in Paris. Our hearts go out to the victims and their famiilies; to the people of Paris and the citizens of France. As the Attorney General said, the Justice Department will do everything it its power to support our counterparts in France and elsewhere, as they have so often done for us. We will honor the fallen not simply with our condolences and our compassioin, but with a steadfast commitment to pursuing those who target our way of life.

A little more than two months ago, we issued a new policy designed to ensure that individual accountability is at the heart of our corporate enforcement strategy. In announcing the policy, we emphasized the importance of holding accountable the individuals who commit corporate wrongs for reasons that are fairly obvious – crime is crime and lawbreakers must be held responsible regardless of whether they violate the law on the street corner or in the corner office. We also know that in the white-collar context, one of the most effective ways to ensure this accountability and to deter future misconduct is by pursuing not just corporate entities, but also the individuals through which these corporations act. And so our policy set forth six ways the Justice Department is changing how it does business to ensure that our attorneys and agents make the best possible cases against those individuals.

I'm guessing that you may already have heard about that new policy. And I suspect that, after the memo was published, one or two of the bankers in this room called their lawyers to ask what exactly it meant. I'm sure that at least one or two of the lawyers here were busy working to provide an explanation.

At the risk of taking the mystery out of the policy, now that a couple of months have passed, I thought it would be helpful to expand a bit on what we are trying to accomplish and how we're implementing the policy.

Before rolling out the memo in September, a team of senior DOJ attorneys spent months examining the issue – a project that began under former Attorney General Holder and continued under Attorney General Lynch. I'd like to think that the final product reflected the values that were instilled in these senior DOJ attorneys – and instilled in me – during our long careers at the Justice Department. I joined the U.S. Attorney's office in Atlanta in 1989 and I've been with the department ever since. I spent a significant portion of my career handling white-collar prosecutions, as a line Assistant United States Attorney (AUSA), as the supervisor of our white-collar unit, as a U.S. Attorney and now as Deputy Attorney General. I know how challenging these cases can be and I've seen how extraordinarily hard our Department of Justice attorneys work to make them happen. That's part of the reason we decided to adjust our approach. Everyone at the Justice Department wants to hold wrongdoers accountable, all the more so when those wrongdoers use corporations to lie, cheat and steal. But the barriers to a successful white-collar

prosecution can be substantial. We needed to clear away some of those barriers and make sure that the department's own priorities and resources were fully aligned so we could conduct our investigations more effectively and bring the best cases possible.

I'd like to talk a bit about how we've implemented the policy into the everyday work of our attorneys. Today, we're taking a big step forward on that front by issuing revisions to the United States Attorney's Manual, or the USAM.

As I'm sure many of you know, the USAM is one of the most important documents within the Justice Department community. It is a handbook that contains guidance on everything from initiating an investigation to closing a case and it serves as the foundation for many of the key decisions that DOJ attorneys make during their work. It applies to everyone in the department, regardless of whether they're an assistant U.S. Attorney out in the field or a trial attorney in Washington. I know I consulted it regularly during my years as a prosecutor.

We don't revise the USAM all that often and, when we do, it's for something important. We change the USAM when we want to make clear that a particular policy is at the heart of what all Department of Justice attorneys do and when we want to make sure that certain principles are embedded in the culture of our institution. We also make these revisions as a way of telling the world about our priorities and our values, so that others know what to expect when the Justice Department comes knocking.

The first set of revisions involve the section of the USAM that addresses criminal cases – specifically, corporate criminal cases. Technically, the chapter is called the "Principles of Federal Prosecution of Business Organizations," but most of you know it as simply the "Filip factors."

Today we are updating the Filip factors and the written guidance that accompanies these factors, to highlight some important principles from the September policy. The revised factors now emphasize the primacy in any corporate case of holding individual wrongdoers accountable and list a variety of steps that prosecutors are expected to take to maximize the opportunity to achieve that goal. And we are adding language that codifies a number of internal reporting and approval requirements, which are designed to ensure consistency across the Justice Department and allow us to keep track of how these policies are being implemented.

An important component of the individual accountability policy and the new revisions to the factors involves corporate cooperation. This seems to be the policy shift that has attracted the most attention. The new rule in the revised factors is exactly how I laid it out two months ago: if a company wants credit for cooperating – any credit at all – it must provide all non-privileged information about individual wrongdoing. Companies seeking cooperation credit are expected to do investigations that are timely, appropriately thorough and independent and report to the government all relevant facts about all individuals involved, no matter where they fall in the corporate hierarchy.

I would note that this concept -- that corporate cooperation includes giving all non-privileged information about the conduct of individuals – is nothing new. It was in the Filip factors long before this most recent policy shift and it is a point has been repeatedly emphasized by department officials, particularly Leslie Caldwell, our terrific Assistant Attorney General of the Criminal Division.

What is new is the consequence of not doing it. In the past, cooperation credit was a sliding scale of sorts and companies could still receive at least some credit for cooperation, even if they failed to fully disclose all facts about individuals. That's changed now. As the policy makes clear, providing complete information about individuals' involvement in wrongdoing is a threshold hurdle that must be crossed before we'll consider any cooperation credit.

Some have claimed that this new cooperation policy will result in unnecessarily broad, costly and time-consuming internal investigations. But when we announced the policy, we made clear that we were not intending for companies to embark on a years-long, multimillion dollar investigation every time a company learns of misconduct.

We made clear at the time that we expect investigations to be tailored to the scope of the wrongdoing. We expect cooperating companies to make their best effort to determine the facts with the goal of identifying the individuals involved. As we said previously, if there is any question about the scope of what's required, you should do what many defense attorneys do now – pick up the phone and discuss is with the prosecutor.

Others have opined that a company that does not have access to all the facts will be at a disadvantage, despite their best efforts to do a thorough and timely investigation. As the corporate entity, the presumption will be that you have access to the evidence. But if there are instances where you do not, or you are legally prohibited from handing it over, then you need to raise these issues with the prosecutor.

Additionally, there is nothing in the new policy that requires companies to waive attorney-client privilege or in any way rolls back the protections that were built into the prior factors. The policy specifically provides that it requires only that companies turn over all relevant non-privileged information and our revisions to the USAM – which left the sections on the attorney-client privilege intact – underscore that point.

But let's be clear about what exactly the attorney-client privilege means. As we all know, legal advice is privileged. Facts are not. If a law firm interviews a corporate employee during an investigation, the notes and memos generated from that interview may be protected, at least in part, by attorney-client privilege or as attorney work product. The corporation need not produce the protected material in order to receive cooperation credit and prosecutors will not request it. But to earn cooperation credit, the corporation does need to produce all relevant facts –including the facts learned through those interviews—unless identical information has already been provided. We will respect the privilege, but we will also expect companies to respect its boundaries and not to wrongly exploit its legitimate purpose by using it to shield non-privileged information from investigators.

Some have theorized that our new policy will have a chilling effect on employees' willingness to cooperate in their companies' internal investigations, thus limiting our ability to find out what really happened. I will acknowledge that our focus on culpable individuals may make some employees nervous. Some may have reason to be nervous. But to the extent that there's a tension between the interests of the company and the interests of individuals in an internal investigation, that dynamic is nothing new. This tension is reflected in the admonition that corporate counsel give employees that they represent the company not the employee and that the company may provide to the government any information that the employee provides. So these new cooperation rules simply emphasize -- for the benefit of companies and prosecutors – the importance of identifying individual wrongdoers in any corporate case.

Understand that we're not asking companies to pin a scarlet letter on their employees or provide us with prosecutable cases against them in order to get the benefits of cooperation. Cooperation does not require a company to characterize anyone as "culpable." Cooperation does require that a company provide us with all facts about the all individuals involved.

Two last points on the subject of cooperation. First, timing, as always, is of the essence. A company should come in as early as it possibly can, even if it doesn't quite have all the facts yet. The new USAM language makes plain that a company won't be disqualified from receiving cooperation credit simply because it didn't have all the facts lined up on the first day it began talking with us. Rather, under those circumstances, we expect that cooperating companies will simply continue to turn over the information to the prosecutor as they receive it.

Second, one of the changes made to the USAM today separates what used to be a single factor that covered both a corporation's voluntary disclosure and its willingness to cooperate into two separate factors – one focused solely on the company's timely and voluntary disclosure and the second on its cooperation. We made this change to emphasize that while the concepts of voluntary disclosure and cooperation are related, they are distinct factors to be

given separate consideration in charging decisions. In recognition of the significant value early reporting holds for us, prompt voluntary disclosure by a company will be treated as an independent factor weighing in the company's favor.

In addition to the changes to the Filip factors, we are revising two other portions of the USAM. One of these involves the USAM chapter on civil cases, where we are adding an entirely new section on enforcing claims against individuals in corporate matters. This new section includes many of the same rules that we're applying to criminal cases. We expect our civil attorneys, like our prosecutors, to focus on individuals from the beginning of the investigation. We allow them to resolve corporate cases only when there is a clear plan to pursue individuals. And we permit cooperation credit for companies only when they have provided all relevant non-privileged information about the individuals responsible.

This new section also includes another important change that we announced in the September policy. As you all know, the criminal USAM guides prosecutors' decisions on when to bring a criminal action against an individual, through a series of considerations that include, for example, the seriousness of the misconduct and the strength of the evidence. In this new civil section on individuals, we are directing our civil attorneys to follow the same principles that guide our criminal prosecutors. We are also expressly instructing our civil attorneys that an individual's ability to pay cannot be the sole determinative factor in making decisions about whether to pursue individual misconduct. Just because wrongdoers are judgment-proof doesn't mean they should escape all judgment. This change acknowledges that our mission in civil corporate cases is not just to recover money. It is also to redress and deter misconduct. And, while hefty corporate fines can be a necessary part of achieving these goals, our job is not complete if we fail to focus on the individuals who committed the wrongful acts in the first place.

The final area of revision is to the USAM section on parallel proceedings. In particular, we are updating our long-standing policy on parallel proceedings, codified in Title 1 of the USAM, to lay out specific steps criminal and civil attorneys handling white collar matters should take with respect to communication and referrals from one side of the house to the other. We recognize that in the area of corporate wrongdoing, it is particularly important to have our criminal prosecutors and our civil attorneys working together. This not only permits us to consider and make the fullest and most appropriate use of all the tools in our toolbox, it also ensures that in every case, we are reaching a resolution for both the individual and the corporation that is in the best interest of the public.

We make all of these changes recognizing challenges that they may present. Some have speculated that the new policy may mean that fewer companies cooperate with the government because of some perception that the new standard is too difficult to meet. I suppose that may happen, but I'm not convinced. I have a hard time imagining that it will truly be in a company's best interest to forego the substantial benefits accorded for cooperation solely to avoid having to provide all the facts about individual conduct. That would seem to be a particularly difficult call for the board of directors of a publicly traded company given the fiduciary duty to the shareholders. But if fewer companies cooperate and our corporate settlements are reduced, we're okay with that. I will repeat a point I made when we announced this policy: our mission is not to recover the largest amount of money from the greatest number of corporations; our job is to seek accountability from those who break our laws and victimize our citizens.

Here in the audience, we have more than lawyers and bankers; we also have one of the most important constituencies in our efforts to combat corporate misconduct: compliance professionals. You are a crucial partner in the fight against white-collar crime. At DOJ, we don't want to go after the corporate wrongdoers simply as an end unto itself; we want to decrease the amount of corporate wrongdoing that happens in the first place. We want to restore and help protect the corporate culture of responsibility. That's only possible with strong compliance programs —and with rigorous internal controls that help companies self-assess and self-correct. It is in our mutual interest to ensure that we root out misconduct, promote fairness and demonstrate that no one is above the law.

At the Justice Department, our ability to do our jobs effectively depends on the public's confidence in the institutions we represent. The public must believe what I have always known to be true; that we will aggressively pursue wrongdoing in all its forms, no matter who the wrongdoer may be. That means that we must continue to demonstrate that our criminal justice system operates fairly and applies equally and is designed not only to punish misconduct but also to try to stop it from happening again.

We must never take the public's trust for granted – our predecessors worked hard to earn it and it is our responsibility to continually earn that trust. I look forward to working with all of you in the months and years ahead as we build and preserve institutions that are fair, honest and accountable. It won't always be easy, but it's vital to our country, our system of justice and our citizens.

Office of the Deputy Attorney General

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