

FCPA Enforcement Trends

Business Ethics in the Global Marketplace

Homer E. Moyer, Jr.
Miller & Chevalier, Chartered, Washington, DC

Defense Industry Initiative
Washington, DC
June 16, 2010

Trends Cited by DOJ

- More cases, more investigations
- Higher penalties
- More prosecutions of individuals
- More cases involving third-party agents
- More industry-specific scrutiny
- Closer cooperation with SEC, foreign enforcers
- Use of traditional law enforcement techniques
- Charging of alternative offenses
- Asset forfeiture

Trends Not Cited by DOJ

- Delays in investigations and dispositions
- Continuing campaign for voluntary disclosures
- Leniency for disclosure, or the opposite?
- Industry sweeps
- Use of targeted individuals as cooperating witnesses
- Greater case autonomy of local US Attorney offices
- Distortions caused by EU debarment rules
- Unfolding changes in UK
- Changing utilization of compliance monitors

Potential Trends, Issues

- Emergence of compliance program standards
- Increasing claims of board member liability
- Aggressive use of disgorgement sanction
- Challenges to monitor selection, roles, costs
- Court challenges to government overreaching (elements, jurisdiction, statute of limitations)
- Complexities of multi-jurisdictional investigations
- Less uniformity in FCPA “precedents”
- Linkages to international arms, drugs, trafficking, terrorism crimes