

PREPARED REMARKS OF
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I. INTRODUCTION

Thank you. Good afternoon, everyone. I am very pleased to be here with you today at the 2006 ABA FCPA Institute.

I would like to begin by thanking the conference organizers for giving me the opportunity to address this distinguished group of lawyers. You have all worked extremely hard to make this a great event, and I could not be more pleased to be a part of it.

II. COMBATING CORRUPTION IS A HIGH PRIORITY

At the outset, let me address the most basic questions some of you might have about the government's attitude toward FCPA enforcement. Do we care about the FCPA? Is the FCPA relevant in today's global business climate? Is enforcing the FCPA a high priority?

The answer to all of those questions is yes. Prosecuting corruption of all kinds is a high priority for the Justice Department and for me as head of the Criminal Division. That includes public corruption, corruption in the procurement process, and the Foreign Corrupt Practices Act.

But do I think it is worth taking a moment to explain why enforcing the FCPA in particular is so important. The answer is simple. We are enforcing the FCPA to root out global corruption and preserve the integrity of the world's markets.

Corruption is the linchpin of so many different global problems. It undercuts democracy and the rule of law. It stifles economic growth and sustainable development. It destabilizes markets. And it creates an uneven playing field for U.S. companies doing business overseas.

By enforcing the FCPA, we are demonstrating our commitment to combating global corruption, maintaining the integrity of U.S. markets, and setting an example for other countries around the world.

As Assistant Attorney General, I have the opportunity to meet with many foreign law enforcement officials. One thing that they frequently tell me is that corruption is a major problem in their countries. They ask me if there is any way the Department can help to solve the problem, whether it is by sending resources or training prosecutors or sharing best practices.

The fact is, we are doing just that. By working with our international partners around the world, we are raising the bar on global anti-corruption enforcement.

For example, just last month, the U.S. Senate approved the U.N. Convention Against Corruption. The U.N. Convention – which was signed by 140 different countries – requires those countries to criminalize bribery of domestic and foreign public officials.

We are also working in the context of the OECD Convention to ensure that the major foreign competitors to U.S. companies are subject to the same stringent rules – and the same penalties for violating those rules – as U.S. companies. And we are working with our regional counterparts to bolster anti-corruption programs in high-risk places like the Far East.

My hope and belief is that if our foreign law enforcement partners see our commitment to combating corruption around the world and to enforcing our own anti-corruption laws, it is more likely that they will prosecute corruption in their own countries.

I believe that these efforts are having the desired effect. A number of other countries – such as South Korea, Switzerland, France and Norway – have undertaken their own corruption prosecutions in recent years, with many more investigations underway.

But let me be very clear about one point. We are not combating corruption and enforcing the FCPA just because it is good for the Justice Department. We are doing so because it is good for U.S. business.

For those of you who are employed by or represent U.S. companies that want to play by the rules, the Justice Department's FCPA enforcement efforts benefit you and your clients.

By enforcing the FCPA, and by encouraging our counterparts around the world to enforce their own anti-corruption laws, we are making sure that your competitors do not gain an unfair advantage when competing for business

overseas. And we are ensuring the integrity of our markets at home so that investors will continue to invest in your companies.

III. NEW FCPA DEVELOPMENTS

Now that you have a sense of why FCPA enforcement is so important to the Justice Department, I want to take a few moments to discuss some new FCPA developments. In fact, the timing of this event is perfect, because the Justice Department has two brand-new corporate FCPA dispositions to announce, as well as a new FCPA opinion that we will be releasing today.

The first disposition is Statoil, which we officially announced on Friday, and the second is Schnitzer Steel, which we will be announcing later today, subject to the court's approval. Let me briefly tell you about these two new cases, starting with Statoil.

A. Statoil

In 2001, Statoil – a Norwegian oil and gas company that is an issuer under the FCPA – started looking for opportunities to develop oil and gas resources in Iran.

Statoil executives met with an Iranian Official who claimed to have influence with the Iranian Oil Ministry, which was responsible for awarding oil and gas rights for the country. To test the Official's claim, Statoil had him send a message to the company through the Oil Minister.

The successful test message satisfied Statoil executives that the Official was as powerful as he claimed. In fact, the Official was a powerful and influential assistant to the Iranian oil minister.

Without performing any due diligence on this Official, the company entered into a "consulting" contract whereby the Official would help Statoil get oil and gas contracts. The contract called for Statoil to pay the Official a total of \$15.2 million over 11 years, and was structured as a payment for vaguely-defined services through a third-party offshore company.

Among other things, the contract required payment of a "success fee" when Statoil was awarded a contract, and payments to "charities" of the Iranian official's choice.

The "consulting" contract was ultimately terminated after it was disclosed in the Norwegian press, but not before Statoil made payments to the Official – through a New York bank – totaling \$5.2 million. Statoil failed to properly account for these payments in its books and records, and Statoil senior management circumvented the company's internal controls in order to pay the bribes.

In exchange for those payments, the Official used his influence to help Statoil obtain enormously valuable oil and gas contracts in Iran by providing Statoil employees with non-public information about oil and gas opportunities, and by showing Statoil copies of its competitors' bid documents.

To resolve this matter, Statoil has acknowledged its criminal conduct, agreed to a \$10.5 million criminal penalty, and entered into a 3-year deferred prosecution agreement, which includes a requirement that Statoil hire an FCPA compliance consultant.

There are two points I want to emphasize about the Statoil case. The first is that this is the first time the Justice Department has taken criminal enforcement action against a foreign issuer for violating the FCPA. I want to send a clear message today that if a foreign company trades on U.S. exchanges and benefits from U.S. capital markets, it is subject to our laws. The Department will not hesitate to enforce the FCPA against foreign-owned companies, just as it does against American companies.

Another thing I want to emphasize about the Statoil case is that the Department's willingness to resolve this investigation by a deferred prosecution agreement was due in part to the fact that the Norwegian authorities have also investigated the conduct and leveled a \$3 million penalty against Statoil for the same conduct. In our view, the deferred prosecution in this case, combined with the action of the Norwegian authorities, is a just resolution to a case of this magnitude.

B. Schnitzer Steel

The other new FCPA case, Schnitzer Steel, involved illegal payments by Schnitzer Steel to both government-owned and private customers in South Korea and China to induce them to purchase scrap metal from Schnitzer. The payments totaled \$1.8 million over five years and helped Schnitzer Steel to obtain hundreds of millions of dollars in profits.

Some of the payments were made in the form of "commissions" or "refunds" paid to the managers of Schnitzer's customers. These kickbacks were often paid in cash – sometimes at secret meetings in restaurants. They were also sometimes paid through secret off-book bank accounts in South Korea.

The bribes also took the form of gifts, such as jewelry or perfume. Other gifts included a \$2,400 Cartier watch, golf club memberships, or the use of company-owned five-star condominiums.

As a result of this conduct, and subject to the court's approval, Schnitzer's Korean subsidiary has agreed to enter a guilty plea later today to violations of the anti-bribery and books-and-records provisions of the FCPA, as well as conspiracy and wire fraud charges.

Additionally, Schnitzer Steel, the U.S. parent company, has agreed to enter into a deferred prosecution agreement, which includes a compliance consultant requirement. As part of the plea and deferred prosecution agreements, the Korean subsidiary has agreed to pay a \$7.5 million criminal fine.

What I want to emphasize about Schnitzer Steel case is that this is an excellent example of how voluntary disclosure followed by extraordinary cooperation with the Department results in a real, tangible benefit to the company. For example, Schnitzer Steel and its Audit Committee:

- voluntarily disclosed the matter to the Department;
- conducted a searching and extensive internal investigation;
- shared the results of that investigation in a prompt fashion;
- cooperated extensively with the Department in its ongoing investigation;
- took appropriate disciplinary action against wrongdoers, irrespective of rank;
- replaced senior management; and
- took significant remedial steps, including the implementation of a robust compliance program.

Schnitzer's exceptional cooperation in this case was critical to its ability to obtain a deferred prosecution agreement, and resulted in a Department recommendation that Schnitzer's subsidiary pay a criminal fine well below what it would otherwise have received.

As I said, this conference was timed perfectly because both the Statoil and Schnitzer cases highlight a number of different FCPA practice issues that I am sure you will discuss over the next two days.

IV. FCPA POLICY ISSUES

Now that you know about the latest FCPA cases, I want to spend the rest of my time this afternoon talking about a few enforcement policy issues that I'm sure will come up in your discussions over these two days: voluntary disclosures, compliance monitors, the FCPA opinion procedure, and transactional due diligence.

A. Voluntary Disclosures

Let me begin with voluntary disclosures. When serious FCPA issues do arise, we strongly encourage you and your clients to voluntarily disclose those issues.

I know that there is a concern out there that there is not enough certainty in the voluntary disclosure process. And frankly, there are good reasons for that.

As many of you know, sometimes a single bribe is just the tip of the iceberg in terms of internal control problems, books-and-records violations, and other bribes. So it would not make sense for law enforcement to make one-size-fits-all promises about the benefits of voluntary disclosure before getting all of the facts.

It also would not be in the best interests of law enforcement to make promises about lenient treatment in cases where the magnitude, duration, or high-level management involvement in the disclosed conduct may warrant a guilty plea and a significant penalty. But what I can say is that there is always a benefit to corporate cooperation, including voluntary disclosure, as contemplated by the Thompson memo.

The fact is, if you are doing the things you should be doing – whether it is self-policing, self-reporting, conducting proactive risk assessments, improving your controls and procedures, training on the FCPA, or cooperating with an investigation after it starts – you will get a benefit. It may not mean that you or your client will get a complete pass, but you will get a real, tangible benefit.

There have been cases where companies have come in and voluntarily disclosed real FCPA violations that we have not prosecuted at all. On the other hand, in other cases a voluntary disclosure might result in a guilty plea, depending on the circumstances.

So although nothing is off the table when you voluntarily disclose, I can tell you in unequivocal terms that you will get a real benefit – just like Schnitzer Steel did. As I said earlier, Schnitzer Steel was an excellent example of corporate cooperation.

B. Compliance Consultants

Along those same lines, I would like to say a few words about compliance consultants or “monitors” in the context of FCPA deferred prosecution or plea agreements.

As many of you know, in several of our most recent FCPA dispositions, including Statoil and Schnitzer Steel, we have required the company to hire a compliance consultant to review the company’s system of FCPA internal controls.

I am aware of the concern among some that the Department automatically requires compliance consultants in all corporate dispositions, including FCPA cases. I am also keenly aware of the special costs and intrusiveness associated with hiring a compliance consultant.

I have given this issue some thought, and what I want you to know is that there is no presumption that a compliance consultant is required in every FCPA

disposition. In fact, the Department takes a case-by-case approach to the substance of FCPA deferred prosecution agreements just as it does in other corporate fraud cases.

Some of the factors that the Department takes into account when determining whether to require a compliance consultant include the strength of the company's existing management and compliance team, the pervasiveness of the problem, and the strength of the company's existing FCPA policies and procedures.

This is consistent with what I was saying a minute ago about voluntary disclosures. There are no guarantees, but if the company's existing FCPA policies and procedures are both thorough and carefully tailored to the specific risks the company faces and the company's management team is otherwise strong, the company will get a real benefit.

And when we do require a monitor, we will make an effort to tailor scope of the monitor's work in appropriate cases.

That being said, there are plainly many circumstances where a compliance consultant is an essential component of any deferred prosecution agreement. Those are cases where the company has simply taken a "cookie cutter" approach to FCPA compliance, or has a "paper" program without any real substance to it.

C. Opinion Procedure

Of course, we also want to encourage companies to talk to us before committing an FCPA violation. That is why we have the FCPA opinion procedure.

As many of you know, by statutory mandate the Department has established an FCPA Opinion Procedure. The requirements for submitting an opinion request are published in the Federal Register and are available on the Fraud Section's website.

Under this procedure, companies and individuals can request the Department's opinion regarding proposed business conduct or a proposed transaction. When the Department issues an opinion under this procedure, the business conduct at issue is presumed to be in compliance with the FCPA.

Just so we're clear, what we're talking about here is asking for advice before undertaking a transaction, not after you have discovered an FCPA violation.

Over the years, the FCPA opinion procedure has generally been under-utilized, with only a handful of opinions being requested each year. But as Assistant Attorney General, I want the FCPA opinion procedure to be something that is useful as a guide to business. It serves both of our interests to avoid FCPA violations before they occur, and the opinion procedure is one way to make that happen.

Some of our recent FCPA opinions have related to proposed payments for Chinese government officials to attend a seminar on U.S. and Chinese labor and employment law in Beijing; a proposed acquisition of companies and assets from ABB, including the two ABB entities that pleaded guilty to FCPA violations in 2004; and a contemplated joint venture with a foreign company.

As I mentioned earlier, we will be releasing a brand new opinion today. The opinion involves a proposed \$25,000 payment to the customs authority in an African country. The payment is for a pilot program to provide monetary incentives for local customs officials to spot counterfeit goods, which is a big problem for this particular company and industry.

Based on all the information the company has provided to us, the Department is satisfied that this payment does not violate the FCPA.

D. Due Diligence

In addition, the opinion procedure may be especially useful in the context of joint ventures, mergers, and acquisitions in those instances when the FCPA due diligence turns up potential problems with the foreign counterpart.

Transactional due diligence in the FCPA context is good for business. We saw this in the case of GE's merger with InVision. In that case, investigations by DOJ and the SEC revealed that InVision paid bribes in the Far East in connection with sales of its airport security screening machines. InVision ultimately accepted a deferred prosecution agreement and paid an \$800,000 fine.

But because the conduct was discovered before the transaction was completed, GE avoided having to potentially accept successor liability for InVision's conduct. Although GE entered into a separate agreement with the Department to ensure InVision's compliance with the DPA, think of the potential consequences to GE if they had not performed thorough due diligence in that case.

Again, the point here is that transactional due diligence is good for business, and I strongly encourage you and your clients to do thorough FCPA due diligence in transactions involving overseas companies.

V. CONCLUDING REMARKS

With that, I would like to close by saying once again how pleased I am to have the opportunity to speak to you today. I want this to be an ongoing dialogue, and I look forward to continuing it in the future.

Thank you for listening, and enjoy the rest of the conference.