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White Collar Defense and Investigations

Major Changes to Justice Department Policies May Be Coming

Action Item: Recent remarks by Deputy Attorney General Rod Rosenstein suggest that the U.S. Department of Justice may be consolidating its policies—which are normally articulated through department-wide memos—into a single location: the U.S. Attorneys’ Manual. This may have the effect of making the Justice Department’s approach to enforcement, and prosecutions, more consistent nationwide.

Historically, the U.S. Department of Justice (“DOJ”) often articulated policy decisions by issuing department-wide memos, usually named for their authors. For instance, in 2015, the DOJ announced a policy of holding individuals accountable in corporate prosecutions. Authored by then Deputy Attorney General Sally Yates, this policy is widely known as the “Yates Memo.” In addition to these types of memos, DOJ policies are articulated via other vehicles as well—including speeches, FAQ documents, web pages, and the U.S. Attorneys’ Manual (“USAM”).

At an October 6, 2017 speech given at New York University School of Law, Deputy Attorney General Rod Rosenstein suggested that the DOJ’s practice of issuing memos to affect policy would change. He stated in his remarks that

“[m]anagement-by-memo is an inefficient and often ineffective method of enforcing government policies.” He added that “[t]he Deputy Attorney General should not be known for writing memos.”

Instead, he suggested that the DOJ would consolidate its policies in the USAM, which would increase transparency for potential defendants. Mr. Rosenstein also suggested that future DOJ policies would be subject to public input from corporations and other interested parties.

The consolidation of policies in a single location would signal a shift away from “soft” guidance, in which attorneys and potential defendants must “read the tea leaves” to discern the DOJ’s intent. Uniting all DOJ policies within the USAM would signal a more consistent method to the DOJ’s enforcement and prosecutions nationwide. The suggested implementation of a procedure for receiving public comments also indicates a change in the DOJ’s approach to policymaking.

This potential change will, however, potentially cause delay in the implementation of new policies as changes to the USAM must undergo a more stringent internal DOJ review and approval process. Two policies that Mr. Rosenstein indicated

White Collar Defense and Investigations ■ Page 2

would be up for review are the Yates memo referenced above, as well as the Foreign Corrupt Practices Act Pilot Program, which was implemented in April 2016 and extended in March 2017.

Accordingly, it appears that certain DOJ policies are in flux, although Mr. Rosenstein did state that the DOJ would continue to prosecute financial fraud, including in the individual context. However, at this juncture, monitoring and navigating these changes (or potential changes) should be done with care.

Blank Rome's [White Collar Defense and Investigations](#) professionals regularly advise clients as to legal compliance with areas under the oversight of the Fraud Section of the DOJ, including the Foreign Corrupt Practices Act, healthcare fraud, and securities fraud. Blank Rome's attorneys are also available to provide tailored compliance training to high-risk employees. Please contact a member of our team if you have any questions regarding the new DOJ guidance or the implementation of legal compliance measures.

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