Lanny A. Breuer
Assistant Attorney General, Criminal Division
U.S. Department of Justice
Prepared Remarks to
***Compliance Week* 2010 – 5th Annual Conference for**
Corporate Financial, Legal, Risk, Audit & Compliance Officers
May 26, 2010

Thank you for that kind introduction. It's a privilege for me to be here this morning at this very impressive conference, and I want to thank *Compliance Week* for the opportunity to speak to all of you.

I have now been on the job for just over 13 months. And in those 13 months, I have spoken often and to a variety of audiences about the Justice Department's determination to prosecute – and prosecute aggressively – financial fraud and corruption in all its forms. The American public demands no less, and we will deliver no less.

To be sure, prosecutions play an important role in our enforcement strategy – they promote respect for the rule of law, deter future misconduct, and punish those who have benefited from harming others. But punishing a crime after it's happened is never our first preference. Our preference is for the crime to be prevented from happening at all. And that, of course, is where you come in.

You all are on the front lines each and every day. You all are the stewards of good corporate citizenship within your organizations – working to ensure compliance with the law, adherence to sound ethical practices, and, more than anything, the maintenance of a living, breathing culture of compliance. You all are, in a very real sense, in the business of prevention. And never before has it been as important.

It is important not only because there is intrinsic value in being a good corporate citizen. It is important because of the globalization of business and the complexity of our financial markets – both of which combine to present serious risks for your organizations. These risks are only magnified by what I believe is a new era of heightened white-collar crime enforcement – an era marked by increased resources, increased information-sharing, increased cooperation and coordination, and tough penalties for corporations and individuals alike.

Let me spend a few minutes talking about some of the trends in this regard that I think will be of interest to you.

An Era of Heightened Enforcement

The first trend worth highlighting is the attention that the Obama Administration has given to combating financial fraud. The centerpiece of the Administration's efforts is the Financial Fraud Enforcement Task Force, which was created by Executive Order last November.

The Task Force brings together the government's strongest tools to fight fraud. It is chaired by the Attorney General and includes among its senior leadership the Secretary of the Treasury, the Chairwoman of the SEC, and the Secretary of Housing and Urban Development. Over two-dozen federal, state, and local agencies have joined the Task Force in order to focus high-level attention and resources across the federal government on the investigation and prosecution of significant financial crimes. Already, Task Force members have come together to discuss trends, develop data- and intelligence-driven enforcement strategies, offer training, and coordinate sweeps and other cooperative and creative enforcement initiatives. I'm very optimistic that the Task Force, because it has the attention of the White House and the active leadership of Cabinet-level officials, will be instrumental in bolstering the way we approach financial fraud enforcement in this country.

An important companion to the Task Force is the provision of additional resources to address financial fraud. For its part, the Department has been ramping up – in the Fiscal Year 2010 budget, there is significant additional funding for prosecutors and support personnel, and the President's 2011 budget request goes even further by seeking a 23 percent increase over 2010 levels for economic fraud enforcement.

Additional resources are also being committed in the Criminal Division, where we are in the process of adding a number of attorneys to the Fraud Section – lawyers who will be deployed immediately to prosecute crimes like securities fraud, health care fraud, and foreign bribery under the Foreign Corrupt Practices Act. New talent has also infused the Fraud Section's leadership ranks, which has a new and dynamic leader in Denis McInerney, a former prosecutor and deputy criminal chief in the U.S. Attorney's Office in Manhattan and, most recently, a partner at Davis Polk.

Just as we are devoting more resources and coordinating across the Executive Branch, we are also making use of more aggressive law enforcement techniques. Indeed, we are now using in the fight against white-collar crime various undercover techniques, including court-authorized wiretaps. Two well known examples, of course, are the recent FCPA undercover "sting" operation resulting in the indictment of 22 individuals, as well as the use of wiretaps in the Galleon case. And I think it is fair to say that we will continue to look for opportunities to innovate in how we identify financial fraud and corruption.

The Department, of course, is not the only agency seeking to innovate. In January, the SEC announced a series of measures intended to encourage greater cooperation from individuals and entities. For example, the SEC will now make use of cooperation agreements, as well as deferred and non-prosecution agreements – all of which have been staples of the Justice Department's approach in white collar criminal cases for many years now. These innovations will likely lead to even earlier and closer coordination between the SEC and the Justice Department. Time will tell.

Interestingly, this cooperation and coordination is not just limited to U.S. law enforcement. We are actively working with our foreign counterparts in various areas to ensure that country borders won't limit our ability to fight fraud. As recently as February, new U.S.-

E.U. agreements on mutual legal assistance and extradition went into effect. These agreements offer significant new tools that will streamline cross-border investigations and allow for even greater cooperation with our counterparts abroad.

So, as you can see, financial fraud enforcement is receiving quite a bit of attention. Indeed, everywhere I look – whether it is:

- the creation of the Financial Fraud Enforcement Task Force;
- the provision of additional resources within DOJ for fraud prevention and enforcement;
- the more aggressive use of law enforcement techniques to combat financial crime;
- or the increased cooperation and coordination within law enforcement both here and abroad,

I see an extraordinary level of commitment in this area.

Let me spend a few minutes talking specifically about foreign bribery, which obviously is at the center of this heightened enforcement climate and which presents unique compliance challenges.

Foreign Bribery

As I have said in the past, foreign bribery is a law enforcement challenge of truly global dimensions. It is, as the Attorney General has said, a "scourge on civil society." We in the Criminal Division combat foreign bribery each and every day. And as we go about our business, we are looking carefully at lapses in corporate compliance. Why? Because of what I said a few minutes ago. Our preference, like yours, is for these crimes to be prevented in the first instance. And the only way that can happen in your organizations is through a robust, state-of-the-art compliance program and a true culture of compliance.

I know that you all do not lack for incentives; the statistics in FCPA enforcement are well known. But it is worth pausing on them for a moment.

Since 2004, the Fraud Section has achieved 37 corporate FCPA and foreign bribery related resolutions, with fines totaling over $1.5 billion. In this time period, we have charged 81 individuals with FCPA violations and related offenses. Forty-six have been charged since the start of 2009 – more than the total number of individuals charged in the previous seven years combined.

The individuals charged have included CEOs, CFOs, other senior-level corporate officials and, where jurisdiction existed here, several foreign officials. Charging individuals is part of a deliberate enforcement strategy to deter and prevent corrupt corporate conduct before it happens. And rest assured that we will seek equally tough sentences, including significant jail time if appropriate, to reinforce this message of deterrence.

Aggressive enforcement by the Criminal Division provides one set of incentives for corporations. Others are sprouting up each and every day, and they are coming from all corners as anti-fraud and corruption enforcement catches up with the globalization of business.

Here in the United States, the United States Sentencing Commission recently approved amendments to its Sentencing Guidelines, one of which reaffirmed the importance of compliance and ethics programs within organizations. The amendment stressed the critical need to embed these programs at the very highest level of the organization. In an interesting twist, the Commission expanded eligibility for effective compliance and ethics program credit at sentencing even if one or more members of "high level personnel" has some role in the offense.

But there's a catch. In order to be eligible for credit where there is such "high level" involvement, the corporation must have in place a direct reporting relationship between the individual with operational responsibility for the compliance program and the corporation's governing body. And more than that, the corporation must have discovered the offense and reported it to enforcement officials before it otherwise became known. The amendment has not been uncontroversial. But whatever your opinion, it can at least be said that the amendment reflects the Commission's view that compliance should be embedded at the very highest levels of an organization.

On the international front, the United Kingdom has passed a new, comprehensive Bribery Act that criminalizes, among other things, the failure by a corporate entity to prevent bribery. Pretty serious, right? Well, the Act does provide a defense to such a charge if the corporate entity can show that it has "adequate procedures" in place to deter and detect such conduct. What does "adequate procedures" mean? It's not entirely clear. And I'm, of course, not your lawyer. But, at a minimum, it would seem prudent to have in place a strong, state-of-the-art compliance program.

So where does all of this leave you? How can you ensure that your corporation is, so to speak, "compliance compliant"? Let me offer a few thoughts.

A Path Toward Effective Compliance

Ultimately, from our perspective, an effective compliance and ethics program is one that prevents fraud and corruption in the first place and, when it can't, has in place clear policies to quickly detect, fix, and report the violations. Likewise, an effective compliance program is dynamic and ever-evolving; it cannot exist only on paper.

There are, of course, no "check the box" answers. But there are benchmarks.

One benchmark, as I'm sure you know, is the Principles of Federal Prosecution of Business Organizations, which has an entire section – also set forth in the United States Attorneys' Manual – devoted to corporate compliance programs.

Another is the OECD's *Good Practice Guidance on Internal Controls, Ethics, and Compliance*. If you haven't read the *OECD Guidance* yet, read it. And then think about how you might tailor the Guidance to your organization. And know that, as you do, the Criminal Division cares about all the things you might be considering – "tone from the top" support, encouragement of a culture of compliance that rewards ethical behavior and establishes whistle-blowing mechanisms, senior-level oversight and direct reporting lines, periodic reviews and re-evaluations to test and ensure program effectiveness, appropriate disciplinary mechanisms, and extension of anti-corruption policies to third-party agents and business partners, to name a few.

Of course, even the best compliance program may not stop fraud or corruption from occurring. So, what should a corporation do when a problem has been discovered?

Whether to voluntarily disclose potential criminality is admittedly a difficult question for business entities.

But I can offer you this: If you come forward and if you fully cooperate with our investigation, you will receive meaningful credit for having done so. In talking about "meaningful" credit, we are not promising amnesty for doing the right thing. But, self-reporting and cooperation carry significant incentives – by working with the Department, no charges may be brought at all, or we may agree to a deferred prosecution agreement or non-prosecution agreement, sentencing credit, or a below-Guidelines fine. Ultimately, every case is fact-specific and requires an assessment of the facts and circumstances, as well as the severity and pervasiveness of the conduct and the quality of the corporation's pre-existing compliance program. But, in every case of self-disclosure, full cooperation, and remediation, the Department is committed to giving meaningful credit where it's deserved to obtain a fair and just resolution.

The Siemens matter is a case in point. While the conduct in that case is arguably the most egregious example of systemic foreign corruption ever prosecuted by the Department, it also illustrates the tremendous benefits that flow from truly extraordinary cooperation. By Siemens opening itself up to authorities, the Department completed its investigation and resolved the case – with domestic and international dimensions – in two years' time. In the end, the benefits Siemens received through its cooperation, even in the absence of a voluntary disclosure, were plain – the $450 million fine that was paid to the Justice Department, although quite substantial, was a far cry from the advisory range of $1.35 billion to $2.7 billion called for in the Sentencing Guidelines. Put another way, Siemens received a penalty that was 67 to 84 percent less than what it otherwise could have faced had it not provided extraordinary cooperation and carried out such extensive remediation.

Another example, on a more modest scale, was the resolution of the Helmerich & Payne matter, a company that self-disclosed improper or questionable payments. The case was resolved through a non-prosecution agreement with a term of two years, a penalty of $1 million (which was approximately 30 percent below the bottom of the Guidelines range), and compliance self-reporting by the company for a period of two years in lieu of an independent compliance monitor. Because of the forward-leaning, proactive, and highly cooperative approach taken by Helmerich & Payne, that company received a host of benefits that likely

would not otherwise have been obtained from the Department.

In short, these two cases, and others like them, reflect the Department's willingness to step up to the plate when a corporation does the right thing by making a voluntary disclosure and cooperating fully.

Let me offer one additional piece of guidance on this topic. When a problem has been discovered, the corporation should seriously consider seeking the government's input on the front end of its internal investigation. We encourage a company to come in and describe its work plan for conducting the investigation. Often we have questions, or helpful suggestions, or we may ask that the corporation expand the scope of the investigation. Regardless, the dialogue can be very helpful in ensuring at the outset that the corporation has an effective, cost-effective plan in place to investigate and deal with the problem.

Before I conclude, I should say a word or two about compliance monitors.

In resolving criminal conduct, the Department's goal is to vindicate the law and ensure adherence to it in both letter and spirit. In that regard, the structure and terms of a corporate resolution are properly determined by the particular facts of the case and the circumstances surrounding the specific business entity and the public interest. Thus, a compliance monitor may be particularly useful where the agreement requires the corporation to design, or substantially re-design, and implement a broad compliance and ethics program and internal controls. As an independent observer, the monitor can enable the government to verify whether a business is fulfilling the obligations to which it agreed. In other cases, however, a compliance monitor may not be needed for a variety of reasons, such as where the business organization has ceased operations in the area where the criminal conduct occurred, or where the business has re-designed and effectively implemented appropriate compliance measures and internal controls before entering into an agreement with the United States.

However the calculus plays out, we are always mindful of, and we do weigh, the potential benefits of employing a monitor with the cost of a compliance monitor and its impact on the operations of the business organization. Of that much you can be sure.

Conclusion

I want to thank you for all the work you do and for inviting me to address you this morning. I will say that I do not envy you. Compliance is a daunting task, made all the more difficult by the nature of global business today. But those challenges cannot be an excuse. Good corporate citizenship and adherence to the law is fundamental to the fair and free functioning of markets everywhere. The Justice Department will continue to stand ready to root out corruption in those markets, and we hope and expect that you will do your best to partner with us in that most important of efforts.

Thank you again. I would be happy to take your questions.