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What Now for White Collar? As the DOJ Steps Back, Will Others Step Up?

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WHITE COLLAR ENFORCEMENT (OR NON-ENFORCEMENT) IN THE TRUMP ADMINISTRATION

The first two months of the Trump Administration have brought deep and widespread changes to the Department of Justice. Those changes will likely affect most aspects of the DOJ's operations but will have perhaps their greatest impact on the department's role in investigating and prosecuting white collar crime. Among other recent developments:

FCPA ENFORCEMENT HAS COME TO A VIRTUAL STANDSTILL

On Feb. 5, 2025, U.S. Attorney General Pam Bondi issued a memorandum directing the Criminal Division's Foreign Corrupt Practices Act (FCPA) Unit to prioritize prosecuting "foreign bribery that facilitates the criminal operations of cartels and transnational criminal organizations" and to "shift focus away from investigations and cases that do not involve such a connection."

Five days later, President Trump went a step further, issuing an executive order directing the Attorney General to initiate a 180-day review period (subject to an additional 180-day extension), during which time the DOJ was ordered to (1) cease initiating any new FCPA investigations or enforcement actions, subject to individual exceptions; (2) review all existing FCPA investigations or enforcement actions and "take appropriate action . . . to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives"; and (3) issue updated guidelines or policies, as appropriate.

THE DEPARTMENT'S DISMISSAL OF THE ERIC ADAMS INDICTMENT SIGNALS A RETREAT FROM POLITICAL CORRUPTION PROSECUTIONS

On Feb. 10, 2025, Acting Deputy Attorney General Emil Bove directed the U.S. Attorney's Office for the Southern District of New York to dismiss the indictment of New York City Mayor Eric Adams "without assessing the strength of the evidence or the legal theories on which the case is based," but rather because of, among other things, a

professed “concern about the impact of the prosecution on Mayor Adams’ ability to support critical, ongoing federal efforts ‘to protect the American people from the disastrous effects of unlawful mass migration and resettlement.’”

Regardless of whether one believes that Bove in fact believes what he wrote, his directive signals a profound shift, as the Department has now announced that a target’s willingness to do the Administration’s bidding is good and sufficient reason for declining to prosecute the target for public corruption offenses.

THE FOLLOW-ON EFFECT OF THE ADAMS INDICTMENT DISMISSAL IS THE HOLLOWING OUT OF THE SDNY AND THE PUBLIC CORRUPTION SECTION.

Danielle Sassoon, the Acting U.S. Attorney for the Southern District of New York, resigned in the face of Bove’s directive. So, too, did the leaders of the Department’s Public Corruption Section when the Deputy Attorney General transferred the case to it.

But, those resignations are likely only the tip of an iceberg. Since the days of Emory Buckner almost 100 years ago, the SDNY has attracted the best and the brightest, regardless of political affiliation.

Historically, those prosecutors have always been expected to pursue their cases without consideration of a target’s “political associations, activities or beliefs.” Bove’s actions and his stated reasons for taking them indicate that this longstanding principle has been abandoned and that, in at least some cases, considerations other than the merits of the case will drive the Department’s decision-making.

That shift has already led to the resignation of at least one of the line prosecutors who was assigned to the Adams case and, in the coming months, may cause others to leave the government, as well.

THE ADMINISTRATION IS LIMITING AND SHIFTING LAW ENFORCEMENT RESOURCES

The Trump Administration instituted a hiring freeze of all executive branch employees. That freeze implicates the DOJ and its federal law enforcement partner agencies, as it does all federal agencies, including the Consumer Financial Protection Bureau, which the Trump Administration may wind down completely.

The administration is also implementing staffing cuts that will have a particularly profound impact on white collar enforcement. First, according to reporting by Bloomberg Law, all 93 U.S. attorneys have been directed to justify the retention of any employee “with less than two years of service who doesn’t work on immigration enforcement, national security, or public safety[.]”

Second, the department is reassigning attorneys from white collar units to focus on immigration enforcement, with similar changes are under way at the FBI and the Departments of State and Defense.

Third, various DOJ supervisors have been reassigned to low-level positions; should a significant number of such former supervisors resign rather than accept these new positions, their departures could impact the Department’s ability to staff matters adequately.

The combined effect of these developments has been to deprioritize white collar enforcement dramatically at the federal level. Yet, as significant as that shift may be, it would be a mistake to conclude that the days of vigorous enforcement are completely behind us. Just as nature abhors a vacuum, so, too, does the white-collar world.

In the wake of the Enron and WorldCom scandals, and the other huge corporate fraud cases of the early 2000s, multiple enforcers have entered the white-collar space at the local, state, and international levels. Others, most notably the Manhattan District Attorney’s Office, were in the business long before that. As discussed below, those other enforcers may not entirely fill the void left by the DOJ, but they undoubtedly will take advantage of the opening.

THE ROLE OF STATE AND LOCAL ENFORCERS

As the nation’s financial capital, New York City has long been the natural hub of white collar enforcement. Although much of that enforcement activity has occurred at the federal level, New York state and local enforcers, such as the

New York State Attorney General's Office (NY AG) and the Manhattan District Attorney's Office, have long played an active role in white collar criminal and regulatory enforcement, too.

Since its creation on Oct. 3, 2011, the New York Department of Financial Services has as well. Each of these offices is well-positioned to fill gaps left by the DOJ and none has shied from taking action even against large, multinational corporations implicated in complex, far-reaching crimes.

THE NEW YORK STATE ATTORNEY GENERAL'S OFFICE

The Attorney General is New York State's chief legal officer, with responsibility for, *inter alia*, "prosecut[ing] and defend[ing] all actions and proceedings in which the state is interested[.]"

As relevant here, the New York Attorney General's Office has broad authority to investigate and pursue civil and criminal enforcement actions in cases of alleged fraudulent or deceptive and misleading practices under, *inter alia*, the Martin Act and General Business Law (GBL) Sections 349 and 350.

The AG's Criminal and Economic Justice Divisions are primarily responsible for investigating and prosecuting white collar and organized crime occurring within the state, including complex financial crimes that cross county lines and multi-national organized criminal activities.

They do so through the Criminal Enforcement and Financial Crimes Bureau, the Antitrust Bureau, the Consumer Frauds and Protection Bureau, the Investor Protection Bureau, and the Organized Crime Task Force (OCTF).

Of the many tools at the AG's disposal, the Martin Act is widely considered to be one of its most powerful to combat financial crime. The Martin Act gives New York enforcement agencies broad powers to investigate, subpoena, and prosecute individuals and companies without the need to prove an intent to defraud.

Unlike other federal legal standards and proof requirements, the Martin Act does not require the government to allege scienter or demonstrate proof of intent to defraud or engage in a fraudulent sale or transaction in the securities context. Instead, the government needs only prove a misrepresentation of a material fact.

The AG has used the Martin Act successfully in a variety of cases over the last few decades, including to prosecute securities investment companies, digital asset entities, and major financial institutions.

For example, in June 2024, the office invoked the Martin Act to file suit against NovaTech Advisors LLC (NovaTech), AWS Mining Pty Ltd., and several other entities, for allegedly orchestrating two consecutive, fraudulent cryptocurrency schemes, which resulted in the transfer of $1 billion in cryptocurrency to NovaTech. The NYAG's complaint alleges 10 causes of action under state law, including securities fraud and engaging in illegal pyramid and Ponzi schemes.

The Martin Act has also been used to prosecute individuals who commit fraud. In 2019, the AG filed suit against Laurence G. Allen and his corporate entities for defrauding investors and misappropriating millions of dollars in assets to enrich himself and his companies.

The court, in addition to granting a preliminary injunction against defendants, ultimately found defendants guilty of defrauding investors and ordered them to pay nearly $7 million in relief. Last year, the AG again invoked the Martin Act to obtain a preliminary injunction to restrain an individual accused of fraudulently attaining $2.9 million from providing further financial services and fraudulent conduct.

Other tools at the AG's disposal include Executive Law Section 63(12), pursuant to which the office may apply for "an order enjoining the continuance of [fraudulent or illegal] business activity or of any fraudulent or illegal acts."

For example, in 2020, the AG invoked the statute to stop three merchant cash advance companies—Richmond Capital Group, Ram Capital Funding, and Viceroy Capital Funding—from engaging in further predatory lending practices.

In 2024, the office announced a $77 million judgment against the cash advance companies and their principals for violations of state laws, following a court order ruling in the AG's favor.

THE MANHATTAN DISTRICT ATTORNEY'S OFFICE

The Manhattan District Attorney's Office has the responsibility and authority to investigate and prosecute crimes in Manhattan. The DA Investigation Division—comprising the Cybercrime and Identity Theft Bureau, the Financial Frauds Bureau, the Major Economic Crimes Bureau, the Rackets Bureau, and the Tax Crimes Unit—is primarily responsible for the investigation and prosecution of white collar and organized crime.

The Manhattan DA's Office has a long history of stepping in to fill gaps left by the DOJ. For example, in the 1990s, the office was widely recognized for its critical role in bringing a sprawling criminal conspiracy case against Bank of Credit and Commerce International when the DOJ initially declined to act.

Ultimately, the case was settled by BCCI's liquidators on Dec. 20, 1991, at which time BCCI pleaded guilty and forfeited all of its assets in the United States, in the amount of $550 million. In the early 2000s, noting that it would "step into situation[s]" where it "see[s] a gap in [federal oversight,]" then-Manhattan DARobert Morgenthau successfully prosecuted former executives Dennis Kozlowski and Mark Swartz for stealing millions of dollars from Tyco International Ltd. (Tyco).

The jury found defendants guilty of, *inter alia*, first-degree grand larceny, falsifying business records, and conspiracy under New York Penal Law, as well as of securities fraud under the State's Martin Act. Kozlowski and Swartz were sentenced to prison terms of 8 1/3 to 25 years and were required to pay approximately $134 million in restitution to Tyco and criminal fines of $70 million and $35 million, respectively.

The Manhattan DA's office has continuously adapted to meet current needs. For instance, in 2010, under the leadership of then-DA Cyrus Vance, the office formed a Suspicious Activity Review (SAR) Team, that reviews suspicious activity reports and other financial filings submitted to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN).

Vance also announced the formation of the Financial Intelligence Unit (FIU) within the office's Major Economic Crimes Bureau, formed to conduct proactive investigations into illicit financial activities and support ongoing prosecutions across all areas of the office.

More recently, in a landmark 2019 case brought jointly with the Department of Financial Services, the Manhattan DA's Office charged Standard Chartered Bank with violating anti-money laundering laws by processing transactions for entities in sanctioned countries.

Under the New York Banking Law and the state's anti-money laundering regulations, the bank was ultimately charged with a $340 million fine and was required to implement enhanced internal compliance measures.

In 2023, the Manhattan DA's Office, crediting the expertise of the prosecutors, investigators, and "specialized cryptocurrency analysts" comprising the office's newly operational cybercrime and Identity Theft Bureau, seized the website domain for Coin Dispute Network, an alleged fraudulent cryptocurrency recovery company, and in 2024 charged its owner with grand larceny and a scheme to defraud.

As yet another example, in February 2025, the Manhattan DA's Office, invoking the Martin Act, indicted an individual, Alan Burak, for allegedly operating an investment fraud scheme to steal over $4 million of investments for his personal use.

THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

The New York State Department of Financial Services was established in the wake of the 2008 financial crisis to create a more efficient, comprehensive financial regulator in the state. It plays a pivotal role in regulating a variety of entities, including banks, insurance providers, and holding companies doing business in New York State.

It has issued numerous industry regulatory guidance memoranda and used existing supervisory and enforcement authority to require companies to remediate bad behavior, entering orders amounting to hundreds of millions of dollars in penalties against companies.

Today, the NY DFS regulates the activities of over 3,000 financial institutions with nearly $10 trillion in assets; over 1,900 insurance companies with assets of more than $6.4 trillion in assets; and 1,300 banks and financial institutions with assets totaling more than $3.3 trillion.

During the last few years, the DFS has been a powerhouse in the cyber and digital asset arenas. For example, under the leadership of Superintendent Adrienne A. Harris, the DFS brought enforcement actions against cryptocurrency companies Robinhood Crypto and Coinbase, Inc., resulting in $30 million and $100 million settlements, respectively.

In February 2024, another virtual currency business, Gemini Trust Company, LLC, agreed to return at least $1.1 billion to customers, as well as to pay a $37 million fine as part of a consent order entered into with DFS, for violations including its failure to maintain adequate anti-money laundering (AML) programs.

DFS has also taken an active role in regulating traditional financial institutions. For instance, in May 2017, BNP Paribas S.A. and its New York branch agreed to pay $350 million as part of a consent order entered into with the DFS for violating New York's banking laws, including for major deficiencies in its oversight processes.

In 2024, Nordea Bank Abp and its New York branch agreed to pay $35 million as part of a consent order entered into with the DFS for failures related to, *inter alia*, Bank Secrecy Act/AML compliance measures.

CONCLUSION

In sum, white collar corporate enforcement is not going away – and certainly not in New York. State and local authorities have ample tools to pursue much of the same conduct as federal enforcers, including the Martin Act for fraud cases, NY Penal Law §470 for money laundering offenses, and NY Penal Law §175 for accounting and other offenses. Significantly, the leaders of these offices have all been vocal about their continued commitment to aggressive enforcement. To wit:

- Attorney General Letitia James, discussing her office's ongoing "responsibility to enforce state laws," has stated that she "will continue to investigate and prosecute crimes" regardless of the Trump Administration's agenda.
- Manhattan District Attorney Alvin Bragg has discussed the "unique and powerful tools to prosecute complex financial crimes" at his office's disposal, including the Martin Act. Noting the hurdles to federally prosecuting corruption cases, he has stated that local law enforcement offices like the Manhattan DA are "not only . . . well situated, [but also] in some senses, [] best situated" to take on complex financial crimes.
- DFS Superintendent Harris has expressly opined that a rollback of federal regulations would "certainly increase the volume of consumer protection cases that [NY DFS] may bring on the enforcement side," and explained that, while her office was "not ideological," "[i]f there are new gaps that emerge because we don't have a partner [at the federal level,] then we'll work to fill those gaps as appropriate."

Moreover, even if these enforcers were not filling the void left by the Trump Justice Department's retreat, there would still be powerful reasons for companies to continue to focus on compliance. Notably, the federal criminal laws remain unchanged.

Accordingly, the DOJ could change course at any time, re-adjust its priorities and even, perhaps, decide after 180 days that vigorous FCPA enforcement does further the administration's goals.

But, regardless of whether the Trump DOJ enforces the law, the DOJ under a future administration very well might. And, in doing so, a future DOJ would be able to prosecute criminal conduct that occurred during the Trump Administration that was not barred by the statute of limitations.

In sum, we are facing a dramatically different white collar enforcement landscape today than we were two months ago. Yet, however much that landscape has been altered, it is not completely barren, as our state and local

enforcers are lining up to occupy a good portion of the vacated territory.

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