

Client Alert

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**MESSAGE IN BOTH WORDS AND ACTION:  
JUSTICE AND SEC EXPECTED TO RAMP UP  
FCPA ENFORCEMENT AGAINST TECHNOLOGY,  
MEDICAL DEVICE, PHARMA, AND DEFENSE INDUSTRIES**

Two recent developments demonstrate that the Justice Department and SEC intend to escalate enforcement of the Foreign Corrupt Practices Act against companies that traditionally have avoided the cross-hairs of FCPA enforcement. The regulators' message appears aimed in particular at companies in the technology, medical device, pharmaceutical, and defense sectors. The regulators have delivered their message both in words and actions.

**Words:** At a recent compliance conference in New York, Mark J. Mendelsohn, Deputy Chief of the Justice Department's Fraud Section, delivered remarks that, while his own and not an official pronouncement of the Justice Department, addressed the future direction of FCPA investigations. Among the points he made were:

- Technology, medical device, pharmaceutical, and defense manufacturers should expect to be a focus of future FCPA investigations;
- Software companies may have substantial exposure to foreign bribery in connection with their commerce, given what he described as elasticity in pricing models;
- Technology companies on the whole are behind in building FCPA compliance infrastructure, given that the sector is relatively less mature and recently experienced rapid expansion in its global reach;
- The Justice Department will be more aggressive in conducting industry-wide investigations, pushing its extraterritorial jurisdiction under the FCPA, and prosecuting high-level executives.

**Actions:** Recent investigations show the Justice Department and SEC mean what they say – including two landmark settlements with global corporations, a separate industry-wide investigation, and enforcement against high-level executives:

- In December, Siemens AG, a global technology company, pled guilty to a criminal violation of the books and records provision of

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the FCPA, agreeing to pay a total of approximately \$800 million in fines and disgorgement of profits;

- This month, KBR pled guilty to criminal violations of the anti-bribery provision of the FCPA, and agreed to pay approximately \$579 million in fines and disgorgement of profits along with its former parent company;
- In late 2007, DOJ and the SEC launched an investigation involving five major medical device manufacturers, which is ongoing; and
- In the last two months, two former high-level executives of Control Components Inc. pled guilty to FCPA violations involving illegal bribes to Chinese officials.

**Focus on Compliance:** Mendelsohn's remarks and these recent developments emphasize the need for public companies (and others subject to the FCPA) to ensure existing controls are robust. Competent compliance programs should include:

- Well-developed and executed compliance risk assessments and audits of internal controls;
- Competent employee training on FCPA prohibitions and requirements, visible codes of conduct, and effective mechanisms to allow for reporting of suspicious activity;
- Thorough due diligence in acquisitions and establishment of business arrangements with agents and third parties; and
- Enhanced controls over financial transactions.

For more information on compliance or related FCPA issues, please contact Paul Coggins, Matthew Levine, William Mateja, or Franceska Schroeder as indicated above, or any Fish & Richardson attorney.