CADWALADER

Shifting Policy Priorities in the Second Trump Administration

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1. The FCPA's Changing Enforcement Landscape

On February 10, 2025, President Trump issued an executive order pausing enforcement of the Foreign Corrupt Practices Act ("FCPA"). The order cited "over-expansive and unpredictable FCPA enforcement against American citizens and businesses" as both a mismanagement of prosecutorial resources and a national security concern. Accordingly, the order froze FCPA enforcement for 180 days, including the initiation of new cases, and directed the Attorney General to review existing FCPA cases to ensure that they align with the administration's more tailored enforcement priorities. The order also required that subsequent cases be authorized specifically by the Attorney General.

This executive order followed a February 5 Attorney General directive calling for the Department of Justice ("DOJ") to focus its resources on the new administration's enforcement priorities, including, in the FCPA space, investigations that have a transnational criminal organization ("TCO") nexus. The Attorney General's directive also suspended the requirement that FCPA investigations be conducted by trial attorneys from the Department's Criminal Fraud section for any investigations involving TCOs or cartels. And, according to an internal memorandum by Deputy Attorney General Todd Blanche dated March 25, DOJ leadership is contemplating downsizing FCPA personnel in the Criminal Division's Fraud Section in response to wider administration-wide reduction-in-force initiatives.

The FCPA enforcement freeze has left federal prosecutors, defense teams, and courts scrambling to address pending cases, with outcomes varying by case:

- The trial of a Corsa Coal executive charged with FCPA and money laundering violations has been paused on the request of defendant Charles Hunter Hobson (United States v. Hobson (W.D. Pa.)).
- Attorneys for an election voting machine and service provider company being prosecuted for FCPA violations have moved for an extension due to the administration's shifting policy position (United States v. Bautista (S.D. Fla.)). This motion is currently pending.
- After DOJ and defense counsel reached an agreement to delay a trial for individuals alleged to have bribed Honduran National Police—with the government stating that the case "is undergoing priority review" pursuant to the executive order—the court pushed the April trial to August 2025 (United States v. Zaglin (S.D. Fla.)).
- As Glenn Oztemel awaits sentencing for his conviction for paying bribes to a Brazilian state-owned gas company, the government noted in its opposition to Oztemel's post-trial motion for acquittal that the "case is subject to review by the Attorney General pursuant to" the executive order (United States v. Oztemel (D. Conn.)). The court has not yet scheduled a sentencing hearing.
- On April 2, 2025, prosecutors moved to dismiss FCPA charges against Cognizant Technology executives, "based on the recent assessment of the executive order's application in this matter" (United States v. Coburn (D.N.J.)). (More on this case below.)

The SEC appears to be following DOJ's lead with results varying by case. At least one company has disclosed that its FCPA-related investigation has been postponed by the SEC. Specifically, Calavo Growers announced in a public filing: "On February 18, 2025, the SEC notified us that activity in the investigation has been postponed after President Trump issued Executive Orders."

As the administration's enforcement priorities are still taking shape, it is worth noting that many experts believe that aggressive FCPA enforcement benefits American business and creates a global standard of anti-corruption and accountability.

At the same time, in the wake of DOJ consolidation efforts and the FCPA pause, European authorities have renewed efforts to combat bribery and corruption: on March 20, the United Kingdom's Serious Fraud Office (SFO), France's Parquet National Financier (PNF), and the Office of the Attorney General of Switzerland (OAG) announced a new anticorruption task force focused on cross-jurisdictional collaboration.

During this period of policy uncertainty, companies should consider whether to reinforce their anti-bribery policies, given that the FCPA's criminal anti-bribery statute of limitations is five years—and anti-corruption laws outside of the United States are still in force and unchanged. At the same time, the shifting enforcement landscape may affect whether and how companies choose to approach self-reporting. Voluntary self-disclosure requires careful consideration with the aid of outside counsel.

2. Consistency in FCA Enforcement

In contrast to the executive order pausing FCPA enforcement, the second Trump administration will likely oversee consistent—if not increased—investigations and prosecutions brought under the False Claims Act ("FCA"). During her confirmation hearing, AG Pam Bondi committed to defending the constitutionality of the FCA's qui tam provisions, and promised to maintain staffing and funding levels for FCA prosecutions.

In fact, it is possible that the Trump administration will place extra emphasis on FCA prosecutions consistent with various policy priorities. For example, targeted or increased FCA prosecutions could serve to highlight administration-wide efforts to reduce government spending and waste; in addition, the FCA may be used as a tool to vindicate the President's trade agenda through the enforcement of customs laws. FCA claims could also conceivably be brought against companies with government contracts or grants if they falsely certify compliance with President Trump's executive order banning DEI practices (though this executive order is currently enjoined in part).

3. Corporate Transparency Act Updates

On March 2, 2025, Treasury Secretary Scott Bessent announced that the Corporate Transparency Act ("CTA") would no longer be enforced against United States citizens and domestic reporting companies. Instead, the Treasury Department will only enforce the CTA against foreign entities registering to conduct business in a U.S. state. This carveout for domestic corporations coincides with the Financial Crimes Enforcement Network's ("FinCEN's") plan to remove reporting requirements for U.S. companies. As part of this plan, FinCEN issued an interim final rule revising the definition of "reporting company" to include only entities formed under a foreign country's laws and which are registered to do business in the U.S., and excepting entities formerly known as "domestic reporting companies" from reporting requirements.

There are still many topics that the agency will have to clarify, including what happens to the extensive data already submitted to FinCEN for domestic reporting companies and if that data will be preserved forever or eventually erased. Additional regulatory and legal developments are expected in the coming weeks as courts and agencies adjust to the CTA's revised enforcement plans.

Even given the U.S.-based freeze, companies should continue tracking CTA enforcement developments—not least because U.S. citizen-clients may be beneficial owners of foreign reporting companies still subject to disclosure requirements.

4. Designation of Cartels as Foreign Terrorist Organizations/Specially Designated Global Terrorists

Upon taking office, President Trump issued an executive order mandating the Secretaries of State and Treasury to review whether certain international cartels should be designated foreign terrorist organizations ("FTOs") or specially designated global terrorists ("SDGTs"). On February 20, the United States designated eight organizations, including Tren de Aragua, MS-13, and the Sinaloa Cartel as FTOs and SDGTs, and added them to the Specially Designated Nationals and Blocked Persons List ("SDN List") for sanctions purposes.

These designations increase compliance and enforcement risks for companies doing business internationally in areas where the cartels operate, especially in Latin America. For example, companies making payments to one of these cartels to ensure employee safety or to continue doing business in the area may risk prosecution for providing material support or resources to an FTO. Similarly, companies may also risk civil suit from victims of cartel violence arising out of the same conduct. Companies should closely monitor these enforcement policies and ensure that their compliance programs account for these significant developments.

5. Executive Order Ensuring Agency Accountability

On February 18, 2025, President Trump issued an executive order "ensur[ing] Presidential supervision and control of the entire executive branch" by "increas[ing] regulatory officials' accountability," including those at "so-called independent regulatory agencies," "to the American people." Agencies subject to the executive order include the Board of Governors of the Federal Reserve System, the CFTC, FDIC, SEC, and CFPB, among others. In particular, the order subjects independent agencies to White House budgetary and regulatory review, requires policy coordination with other administration components, and states that authoritative interpretations of law will come from the President and Attorney General—all changes that serve to centralize authority over executive agencies.

Going forward, the order projects that the enforcement and regulatory functions of independent agencies will much more closely align with the current administration's policy positions and priorities. The SEC and CFTC have announced such coordinated policy changes (as detailed below), and we expect the same from other independent agencies.

6. SEC Revokes Enforcement Division's Authority to Issue Subpoenas

On March 10, 2025, the Securities and Exchange Commission ("SEC") issued a final rule withdrawing a 15-year-old policy that allowed the SEC to delegate formal order authority to the Director of the Division of Enforcement, including the ability to issue subpoenas in investigations without seeking the SEC's approval. The SEC explained that this change was a "result of the Commission's experience with its nonpublic investigations," and was "intended to increase effectiveness by more closely aligning the Commission's use of its investigative resources with Commission priorities."

In issuing this rule, the Commission itself now controls when staff are authorized to issue subpoenas in investigations and can refuse to issue a formal order if they do not view a proposed investigation as a priority. As a result, SEC Commissioners now have more operational oversight over the activities of the SEC staff and the investigations that are conducted. From a practical perspective, the time for the SEC to initiate an investigation may be lengthier and, relatedly, we expect to see more voluntary requests for information from the SEC, in lieu of subpoenas.

This policy shift aligns with President Trump's February 18, 2025 agency-accountability executive order, discussed above, in ensuring closer accountability between the SEC and White House.

7. SEC Crypto Enforcement Pauses

On January 21, 2025, consistent with President Trump's goal to make the United States the world's "crypto capital," the SEC established a Crypto Task Force "dedicated to developing a comprehensive and clear regulatory framework for crypto assets." As part of this emerging regulatory framework, the task force hopes to "draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously." The task force has begun to host a series of roundtables, with the first held on March 21.

The SEC is also taking measures to shift its enforcement priorities in the crypto space. On February 20, 2025, the SEC announced the creation of a Cyber and Emerging Technologies Unit ("CETU") to "combat[] cyber-related misconduct and . . . protect retail investors from bad actors in the emerging technologies space." Staffed with thirty fraud specialists and attorneys nationwide, CETU will focus on combating fraud involving blockchain and crypto assets; fraud committed using emerging technologies, including AI; and the use of social media and the dark web to perpetrate fraud. The CETU replaces the Commission's Crypto Assets and Cyber Unit. This reassessment comes at a time when the SEC is pausing existing enforcement actions against Coinbase, Binance, and Lejilex.

The SEC has also telegraphed its shifting enforcement priorities by dropping several enforcement actions against large crypto companies, including Kraken, ConsenSys, and Cumberland DRW LLC on March 27. The SEC also informed Crypto.com that it has closed its investigation, following a Wells notice issued in October 2024. In each dropped enforcement action, the SEC had previously alleged significant violations, including the unregistered offering of securities, failure to register as a broker-dealer, and misleading investors. The abrupt shift in enforcement follows the agency's broader recalibration under Acting Chairman Mark Uyeda and the formation of its new Crypto Task Force, which "seeks to provide clarity on the application of the federal securities laws to the crypto asset market and to recommend practical policy measures."

Notably, the UK Financial Conduct Authority has advanced its plans to broaden the scope of crypto-asset regulation. In March 2025, the Financial Conduct Authority completed its consultation on extending the current UK crypto-asset regulatory framework beyond financial promotion and AML regulation, to include market abuse rules as well as greater regulation of crypto asset trading platforms (CATPs). Full UK regulation of crypto assets is anticipated by 2026.

8. CFTC Enforcement Guidance on Self Reports

On February 25, 2025, the Commodity Futures Trading Commission's ("CFTC's") Division of Enforcement ("Enforcement Division") issued an Enforcement Advisory, providing updated guidance as to how the Enforcement Division will evaluate a company's or individual's self-reporting, cooperation, and remediation when recommending enforcement actions to the Commission. The purpose of the guidance "is to obtain accountability while encouraging efficiency and conserving government resources by giving entities a clear reason to self-report and cooperate." The advisory, which supersedes the Enforcement Division's prior policy, details the revised framework, including scales for evaluating self-reporting and cooperation, and a matrix for calculating mitigation credit.

The advisory sets out a three-tier scale for judging self-reporting from a designation of "No Self-Report," a "Satisfactory Self-Report," and an "Exemplary Self-Report." Under the updated criteria, an exemplary self-report will notify the Commission of a potential violation by including all material information known at the time of the self-report, and will assist the Enforcement Division in conserving investigative resources. Likewise, the advisory details a four-tier scale for cooperation, ranging from "No Cooperation," "Satisfactory Cooperation," "Excellent Cooperation," and "Exemplary Cooperation." Exemplary cooperation will require consistent material assistance with an investigation, proactive engagement and use of significant resources, completion of remediation, and use of accountability measures. Based on a firm's self-reporting and cooperation scores, the advisory provides for mitigation credit up to 55% for exemplary self-report and cooperation.

In large part, the Enforcement Division's advisory relies on similar principles as DOJ's corporate enforcement guidance frameworks.