WHITE & CASE

Global Anti—Corruption Enforcement: American Style

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GLOBAL ENFORCEMENT TRENDS PANEL
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This Global Anti-Corruption Enforcement: American Style is made on [●]

1. Introduction

(a) The U.S. Department of Justice ("DOJ") has aggressively enforced its anti-bribery statute, the Foreign Corrupt Practices Act ("FCPA"), against multinational companies for decades.

  (i) The fines collected against companies in recent years have reached record levels, with some exceeding USD $1 billion.

(b) There are signs that non-U.S. law enforcement agencies are ramping up their own anti-corruption efforts, applying techniques and approaches that mirror the DOJ's traditional (and highly successful) processes.

(c) What explains this trend?

  (i) Lots of money at relatively low cost.

    (A) The revenue stream from the investigated companies to the government treasuries can be substantial.

    (B) The DOJ has a template for successful prosecutions of complex cross-border misconduct at relatively little cost to the government.

  (ii) Demand for increased transparency and fairness in globalized economy.

(d) This discussion examines:

  (i) Some key features of U.S. corporate investigations and prosecutions;

  (ii) The signs that non-U.S. authorities are adopting DOJ prosecutorial tools;

  (iii) And, finally, how multi-national companies and their counsel should prepare.

2. Key Features of DOJ Corporate Prosecutions – Make Companies do Most of the Work

(a) The DOJ Template for Highly Aggressive (and Successful) Corporate Prosecutions:

  (i) Require companies to institute systems to detect wrongdoing;

  (ii) Incentivize companies to self-report any misconduct to the government;

  (iii) Require companies to cooperate by conducting an internal investigation and reporting results to the government;

  (iv) Disable companies through the doctrine of *respondeat superior* from litigating with the government;

  (v) And incentivize companies to resolve the case by paying large financial penalty.

(b) First, Require Companies to Detect Misconduct.

(i) Corporate Compliance and Internal Financial Controls Requirements.

(A) Section 404 of the Sarbanes Oxley Act ("SOX") requires public companies to maintain effective *internal controls over financial reporting*.

(1) The violation of this requirement is itself an offense that can result in substantial fines. (In the U.S., this is enforced by the Securities and Exchange Commission ("SEC") for companies with securities traded in the U.S.)

(2) But even if not separately charged by the SEC, the DOJ can increase the fine if there has been an FCPA violation and the company did not have proper internal controls in place to prevent the misconduct.

(B) The separate requirement of a *corporate compliance program* is not required by law, but it is just as important.

(1) It is a key metric for determining how much the fine or penalty will be at the end of an investigation.

(I) *See* DOJ release: "Evaluation of Corporate Compliance Programs," April 2019.

1. Guidance to prosecutors as to what they should look for when assessing extent of punishment.

(ii) Whistleblower and "Reporting Up" Requirements

(A) U.S. public companies are legally required to have *whistleblower* policies that enable company employees anonymously to report misconduct to senior management, and if necessary, the board.

(1) Whistleblowers who report misconduct to the SEC, which has parallel jurisdiction over FCPA violations, are eligible for a percentage of the fine that the company later is forced to pay.

(2) This could be as high as 30% of the amount recovered from the company.

(I) *See* SOX, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 15 & 18 U.S.C.).

(3) In recent years, the SEC has received hundreds of whistleblower complaints and many of them are from foreign individuals.

(4) The SEC has paid out millions of dollars to whistleblowers under this program.

(I) One non-us whistleblower received $30 million in 2014.

(II) In 2018, three whistleblowers shared $80 million.

(B) Personal Exposure of Senior Employees

(1) Section 302 of SOX requires the CEO and CFO of a company to personally certify in writing that: (1) they are not aware of any material misrepresentations or omissions in the company's key public reports of financial disclosure; (2) the financial reports fairly present in all material respects the financial condition of the company; and (3) the internal disclosure controls and processes within the company are effective.

(I) In order to provide such certification, the CEO and CFO typically require their direct reports in the finance department, legal department, treasury department, and internal audit, among others, to provide "sub-certifications" to the CEO and CFO that essentially attest to the same representations.

(II) Pursuant to Section 13(a) of the 1934 Act and Sections 11 and 12(a)(2) of the 1933 Act, the CEO and CFO may be charged by the SEC for false certifications and face a bar from employment by a public company, and potentially criminal liability as well.

(III) Because of this system of certifications and sub-certifications, the company officers and employees have a personal incentive to behave in a conservative way, reporting concerns about financial misstatements to the audit committee or refusing to sign.

(2) *In-House Lawyers*: Section 307 of SOX contains a "report up" requirement that compels an in-house lawyer working at a public company to report suspicions of financial misconduct to senior management and, if management does not act, to the audit committee or another "qualified legal compliance committee" of independent board members. Failure to do so could cause the SEC to bar the lawyer from practicing before the SEC in any capacity (which, as a practical matter, could bar counsel from any work on behalf of a public company).

(3) *External Auditors*: Section 10A of the Securities Exchange Act of 1934 requires the external auditor to report to the SEC "likely illegal acts" that have a material impact on its client company's financial statements and where remedial action has not been taken. To ensure that the auditor becomes aware of any such information, Rule 13b2-2 of the 1934 Act prohibits any officer or director from making materially false statements to an auditor.

(I) The audit firms are under severe pressure to tighten their reviews because the regulatory body that oversees the audit industry, the Public Company Accounting Oversight Board ("PCAOB"), regularly audits their work to ensure they fully complied with independent auditing standards.

(II) The firms themselves face legal exposure (from SEC enforcement and civil suits) if they sign off on financial statements that they knew or should have known were materially false or misleading.

(III) As a consequence, audit firms will trigger what are commonly called "Section 10A investigations" if they become aware of a potential fraud or other criminal misconduct. They demand that the company's audit committee undertake an internal investigation and report the results to the audit firm as well as the audit committee. A report to the SEC and/or the DOJ often follows.

(c) Second, Require Companies to **Self-Report** Misconduct.

(i) There is no law in the U.S. requiring voluntary corporate self-disclosure of a crime.

(ii) But, the DOJ has issued a number of statements over the past two decades informing companies that they will be treated more leniently if they self-report a violation to the DOJ.

(iii) Only in recent years has the DOJ tried to quantify what benefit a company gets by voluntarily reporting an act of bribery.

(A) For years, that benefit was never clear, and it was always, "trust us; it's huge!"

(iv) Very recently, however, the DOJ explained that a company that self-reports will not be charged with the offense (with a number of important caveats).

(A) "When a company has voluntarily self-disclosed misconduct in an FCPA matter, fully cooperated, and timely and appropriately remediated, all in accordance with the standards set forth below, there will be a presumption that the company will receive a declination absent aggravating circumstances involving the seriousness of the offense or the nature of the offender."

(1) U.S. Dep't of Justice, Justice Manual § 9-47.120 (2019), https://www.justice.gov/jm/jm-9-47000-foreign-corrupt-practices-act-1977.

(v) Even if the DOJ does not decline prosecution, it will take into favorable consideration a self-report in determining a fine.

(vi) Given all the potential sources of information to the government (including whistleblowers and competitors), the pressure to self-report is high.

(d) Third, Require Companies to "Cooperate" With the Government. That is, Conduct a Thorough Internal Investigation and Report Its Results to Government.

(i) Again, there is no "legal" requirement that companies cooperate, but the consequence of not doing so is harsher penalties at the end of the investigation.

(ii) This requirement is not satisfied by simply making witnesses or documents available when the government wants them.

(iii) In practice, it has meant that the companies hire outside counsel to conduct thorough internal investigations and report the results to the DOJ.

(A) In most instances, the prosecutors never leave the U.S. to interview any witness. They rely on the company's law firm to do much of that work for them.

(1) The prosecutor's work often consists of kicking the tires on the results reported to them by conducting selective interviews and analysis of documents compiled by corporate counsel.

(iv) This was from the DOJ press release announcing the resolution of an FCPA investigation into Brazilian company Petrobras:

(A) The company's "cooperation included conducting a thorough internal investigation, proactively sharing in real time facts discovered during the internal investigation and sharing information that would not have been otherwise available to the department, making regular factual presentations to the department, facilitating interviews of and information from foreign witnesses, and voluntarily collecting, analyzing and organizing voluminous evidence and information for the department in response to requests, including translating key documents."

(1) DOJ Press Release: "Petróleo Brasileiro S.A. – Petrobras Agrees to Pay More Than $850 Million for FCPA Violations," Sept. 27, 2018, https://www.justice.gov/opa/pr/petr-leo-brasileiro-sa-petrobras-agrees-pay-more-850-million-fcpa-violations.

(v) The DOJ has become so accustomed to having the companies' outside counsel do all the work of investigating and analyzing the facts for the government that it recently came under public criticism by a federal judge who accused the government of "outsourcing" its investigation to the company's outside counsel.

(A) *U.S. v. Connolly, et al.*, 16 CR 370 (S.D.N.Y., May 2, 2019)

(e) Fourth, Use **Non-Prosecution or Deferred Prosecution Agreements** for Expedited Resolution of Investigation.

(i) There are essentially four outcomes after a DOJ corporate investigation.

(A) Declination – Government decides not to seek any prosecution or punishment.

(1) Some common circumstances for declination are:

(I) There was no provable criminal activity found (or one of the key elements of an FCPA offense is clearly missing);

(II) The offense was limited, the company had a good compliance program that the employee violated, and the company took swift action to terminate the bad employee, further tightening controls; and/or

(III) The company self-reported and thereafter fully cooperated.

(B) Non-Prosecution Agreement -- No charges filed but:

(1) Company admits to wrongdoing;

(2) Company agrees to a fine, as well as disgorgement of any profits;

(3) Company agrees to potentially other conditions imposed by the government, including the installation of a Monitor.

(C) Deferred Prosecution Agreement – Charges filed in court but not pursued by government in exchange for:

(1) Company admits to wrongdoing and agrees to fine and other conditions (similar to above for Non-Prosecution Agreements);

(2) After an agreed period of time of good behavior (often three years), the government dismisses the charges.

(D) Guilty plea – the Company is formally charged with a crime and agrees to plead guilty.

(1) In terms of penalties, the outcome for the company is not much different from corporate Non-Prosecution or Deferred Prosecution Agreements in that fines are paid and profits disgorged.

(2) The chief difference is that companies that reach a Non-Prosecution or Deferred Prosecution Agreement are not convicted of any crime.

(3) A company pleading guilty is convicted of a crime.

(ii) This range of options provides prosecutors with maximum flexibility to resolve a complex corporate investigation on terms that companies may accept, avoiding any litigation or trial but yielding a substantial monetary penalty.

(f) The Government's Leverage – Doctrine of *Respondeat Superior*

(i) Why do virtually all companies engage in extensive cooperation with the government and then agree to very large financial penalties even when the misconduct of employees was unknown to senior management and contrary to the company's express policies?

(ii) The answer is that the doctrine of *respondeat superior* provides prosecutors with enormous leverage.

(A) In theory, if one employee acting within the scope of his employment engages in a crime, the company is itself criminally liable.

(B) This has been the law for over a century in the United States.

(iii) Companies are also unwilling to suffer the collateral consequences of an indictment.

(iv) Thus, federal prosecutors have broad discretion to bring crippling criminal charges against a company based on the misconduct of employees.

(A) Even if a company believes it could challenge the government's theory on the facts or the law, it is typically unwilling to engage in a public battle with criminal authorities after an indictment.

(g) The Consequences of the DOJ Template:

(i) A steady stream of heavy fines going to the treasury of the U.S. government, year after year. Billions of dollars annually flow to the U.S. government from corporate prosecutions.

(ii) It has also meant increased incentive for corporations to take anti-bribery laws seriously and to implement processes to prevent them where possible.

3. Traditional Transnational Governmental Cooperation

(a) In the past, the DOJ led the way in these transnational anti-bribery investigations, with other nations offering some assistance.

(b) In the mid-2000s, however, we saw the German prosecuting authorities take the DOJ's lead and then pursue their independent investigation of a major multinational company, Siemens AG.

(i) When the matter was resolved in 2008, Siemens paid a total of $1.6 billion, with half of that amount going to each of the U.S. and Germany.

(c) Increasingly, the DOJ has agreed to corporate resolutions where the majority of the fines collected are given to the non-U.S. authorities.

(d) Thus, in the past three years, even though the DOJ drove the investigations, it has shared fines roughly equally with the Netherlands, Brazil, Singapore and France. For example:

(i) In June of 2018, Societe Generale agreed to pay $292 million to the U.S. and $293 million to France.

(ii) In February of 2016, Vimpelcom agreed to pay more than $397 million to the U.S. and the same amount to the Netherlands.

(iii) In November 2017, SBM Offshore NV agreed to split $820 million roughly equally three ways among the U.S., Netherlands and Brazil.

(iv) And just a month later in December 2017, Keppel Offshore & Marine Ltd., split $421 million three ways among the U.S., Brazil and Singapore, with the U.S. taking a slightly smaller share, $105 million.

(e) DOJ's recent collaboration with Brazil has been the most remarkable.

(i) In December of 2016, Odebrecht, the Brazilian construction conglomerate entered into a guilty plea with the DOJ where it agreed to pay the U.S. $253 million with $3 billion going to Brazil and Switzerland (mostly Brazil).

(ii) In September 2018, Pretrobas, a Brazilian oil company, agreed in a non-prosecution agreement, to pay the U.S. over $170 million while Brazil would receive over $682 million.

4. The Trend of Non-U.S., Corporate Enforcement Activity

(a) Increased Corporate Law Enforcement Activity Worldwide. Examples include:

(i) Brazil's Operation Lava Jato (or "Car Wash") is a sprawling investigation by the Brazilian authorities that has spanned years and resulted in the conviction of hundreds of corporate individuals and government representatives.

(ii) Korea has not brought many prosecutions under its foreign bribery statute, but its anti-bribery prosecutions involving Korean officials has been sustained. The nation has been roiled by the investigation and prosecutions of former Presidents Myung Bak Lee and Geun Hye Park in separate bribery scandals.

(A) Among other consequences, the former vice chairman of a leading Korean multi-national company was convicted for his part in dealings with former President Park.

(iii) Similarly, in China, the government has made a sustained effort to address corruption.

(A) It instituted a new organization to combat corruption, the national supervision commission, essentially consolidating three separate prosecuting agencies.

(B) In 2018 alone, several high level officials were prosecuted, including the former President of Interpol and Vice Minister of the Ministry of Public Security, Meng Hongwei.

(C) It recently issued a flurry of new enforcement policies.

(1) In July 2018, "Guidance on Corporate Compliance System" was issued as a recommended national standard for Chinese companies.

(2) In November of the same year, the State-Owned Assets Supervision and Administration Commission of State Council (SASAC) issued "Guidance on Compliance Management for State-Owned Enterprises under the Central Government.

(3) A month later, seven ministry-level agencies jointly issued "Guidance on Corporate Compliance for Overseas Operations" for Chinese companies.

(4) In January 2018, the revised commercial bribery provision under PRC's Anti-Unfair Competition Law (AUCL) took effect.

(b) Trend Toward Adoption of the DOJ Template. For example:

(i) France:

(A) In 2014, France created the role of a national financial prosecutor: "Parquet national Financier" or PNF.

(B) Enacted in December 2016, the "Law on Transparency, Corruption and Modernization of the economy" (the "Sapin II" law), which is France's version of the FCPA, requires:

(1) Comprehensive anti-corruption compliance programs for large corporations.

(I) The programs must include, for example, an internal whistleblowing mechanism.

(2) Permits something equivalent to the deferred prosecution agreements called the "judicial public interest agreement" ("Convention judiciaire d'intérêt public" or "CJIP").

(C) The law also created a new agency: the French Anticorruption Agency ("Agence Française Anticorruption" or "AFA"), tasked with preventing corruption in the public and private sectors

(1) The agency is not a prosecution or investigation body, but conducts remote and on-site audit of companies to ensure that corporations have adequate compliance programs in place.

(D) The AFA-PNF guidelines published last July heavily encourages self-reporting and cooperation through internal investigations turned over to the government.

(1) These factors are designated as essential for the prosecutors to (1) decide whether to permit a negotiated resolution, and (2) determine the sentence/fine.

(E) French prosecutors have already used one case to drive home the need for companies in France to cooperate fully.

(1) In the first ever signed CJIP with HSBC, the agreement justified the heavy fine imposed by noting that "[the defendant], which neither voluntarily disclosed the facts to the French criminal authorities, nor acknowledged its criminal liability during the course of the investigation, only offered minimal cooperation in the investigation."

(F) We have seen an evolution in the French authorities' approach to anti-corruption investigation.

(1) French prosecutors were not involved with earlier major FCPA cases such as *Alstom* in 2013.

(2) Shortly after its creation in 2014, the PNF joined the DOJ case mid-investigation in *Société Générale* (that resulted in parallel US DPA and French CJIP with AFA monitoring in June 2018).

(3) Today, the PNF and SFO (UK Serious Fraud Office) are conducting a joint investigation in *Airbus* following self-reporting by the corporation in 2016, with the DOJ reportedly opening its investigation later on.

(G) Signaling their willingness to impose a heavy penalty on companies that refuse to reach negotiated resolutions, the French authorities obtained a 3.7 billion euro fine against UBS this past February 2019.

(1) The allegations against the bank related to tax evasion.

(2) After long negotiations, where a CJIP (or deferred prosecution agreement) may have been on the table at some point, discussions broke down.

(3) The matter was litigated and a French criminal court imposed the largest, unprecedented fine.

(4) While the matter is on appeal, it is clear that the authorities are prepared to seek American-style penalties. It could be a signal that corporations should seriously consider negotiated outcomes where there is clear evidence of serious wrongdoing.

(ii) The United Kingdom:

(A) In July of 2019, the Serious Fraud Office ("SFO") issued its first written guidance on corporate cooperation.

(1) Mirroring current or former DOJ requirements, the SFO guidance considers cooperation to include waiver of privilege, the conduct and disclosure of the product of internal investigations and the successful prosecution of individuals.

(B) The UK has also implemented deferred prosecution agreements as ways to resolve corporate investigations.

(1) A company can receive a financial penalty discounted by up to 50% (compared to a discount of up to 30% where a person/corporate pleads guilty in the ordinary course of criminal proceedings).

(C) The current director of the SFO, Lisa Osofsky, is a former deputy general counsel for the FBI in the U.S. She has expressed an interest in using U.S.-style investigative methods; for example, the use of witnesses secretly wearing recording devices in meetings with investigative targets, in exchange for leniency.

(1) There is currently a DOJ secondee at the SFO – part of the effort to strengthen and understand respective working practices.

(D) Another important development to watch is current discussion in the UK about introducing a new basis of corporate liability that would be closer (though not as extreme) as the U.S. doctrine of *respondeat superior*.

(1) Currently, a company is only criminally liable where a senior executive who may be described as the "directing mind and will" of the company committed the misconduct.

(2) There are few exceptions to this but the Bribery Act 2010 introduced an offense of "failure to prevent bribery" and the more recently introduced offense of "failure to prevent tax evasion."

(3) Where the offense is one of "failure to prevent," it is not necessary to identify the directing mind and will.

(E) Compare this doctrine and the *respondeat superior* doctrine to that of the more sensible Korean law:

(1) Under Article 4 of the Foreign Bribery Prevention in International Transactions Act, a company can avoid prosecution if it can show that it had in place effective compliance and other internal controls designed to prevent the illegal acts of employees.

(2) China seems to be in line with Korea's approach on this key issue: Yang Hongcan, the director of State Administration of Industry and Commerce, commented during an interview in November 2017 that "a business is not vicariously liable for commercial bribery committed by its employees if substantial evidence exists to prove that the business (1) has in place a reasonable and legitimate compliance program, (2) has taken effective measures to implement the compliance program, and (3) does not otherwise tolerate or acquiesce in employees committing commercial briberies."

(iii) Germany:

(A) As in the UK, currently under consideration is a new law – "Draft Law to Combat Corporate Crime"

(1) Designed to facilitate prosecutions and fines of companies for misconduct of employees (including corruption).

(2) Company can seek leniency in punishment if it carried out an internal investigation, but only if the investigating authorities are comprehensively informed about the results.

(I) This is a novelty in German law.

(B) If an initial suspicion of company related criminal conduct exists, the authorities must investigate. It is no longer left to their discretion.

(iv) The EU:

(A) Recognizing the importance of whistleblowers to corporate investigations, on April 16, 2019, the EU Parliament passed the "directive on the protection of persons reporting violations of union law."

(B) The directive is intended to establish an EU-wide minimum standard for the protection of whistleblowers who report violations of EU law in areas such as public procurement, financial services, money laundering, product and traffic safety as well as consumer and data protection.

(1) The directive leaves to the member states adoption of the protections in their legislation and they have two years to implement the directive.

(v) Brazil:

(A) Recent legislation that encourages establishment of anonymous hotlines and whistleblower activity.

(B) Companies doing business with state agencies are being required in some states to establish effective compliance programs and the failure to do so will lead to sanctions.

(vi) Argentina:

(A) Enactment of a new law on corporate criminal liability. Previously, only individuals had been held criminally liable for bribery.

(B) Law provides for companies to avoid prosecution if they self-disclose the misconduct, put in place a compliance program and disgorge any illegal proceeds of the bribery.

(C) "[E]ffective collaboration agreements," permitting a kind of non-prosecution or deferred prosecution agreement with companies.

(vii) India:

(A) Recent amendments to the anti-bribery law include a requirement that company directors certify that the company has adequate compliance systems in place and that they are working as designed.

(1) This is similar to section 302 of the Sarbanes Oxley Act in the U.S. laws that require such certifications from senior officers of a public company.

(viii) Korea:

(A) Korea has long had legal protections for whistleblowers

(B) And effective corporate compliance programs has been considered a legal defense to corporate liability for the wrongdoings of individual employees.

(ix) China:

(A) As in Korea, China has had its own requirements for whistleblower protections and corporate compliance programs.

(B) To protect and encourage whistleblowers to exercise their rights, the State Council in January 2005 promulgated "Regulation on Complaint Letters and Visits." Governments at the local and provincial levels formulated regulations based on the State Council's model. Together, those regulations stipulate the scope, procedure, protection, and rewards for reporting bribery and corruption.

(C) Different legal provisions require specified companies to institute compliance and internal control functions.

(x) The World Bank

(A) Many of the companies seeking to win projects in developing countries worldwide, where the projects are funded in part by the World Bank, face many of the same anti-fraud and anti-bribery requirements.

(B) A company found guilty of a violation can be suspended or debarred from any further work on projects involving the World Bank funds or other related international funding sources.

(C) The Bank's Integrity Vice-Presidency Unit and the related Office of Suspension and Debarment determine the corporate penalties for violations using many of the same factors that the DOJ and other U.S. agencies use in considering corporate liability (*see* General Principles and Guidelines for Sanctions):

(1) Cooperation (to include internal investigations);

(2) Existence of an effective compliance program.

(D) It employs anonymous hotlines and whistleblower mechanisms.

(E) Many of the current processes resulted from a comprehensive study of the Bank's sanctions practices and a report issued in 2002 by the former U.S. Attorney General Richard Thornburgh who led the DOJ.

5. The Response of Multinational Companies and their Advisors

(a) Institute and Enforce Effective Compliance Programs

(i) Meaningfully combat corruption;

(ii) Good for business:

(A) Attracts investors and enhances the brand;

(B) Avoids costly legal fees, corporate distraction, reputational and competitive loss, and potentially huge fines.

(iii) A robust program should result in more lenient treatment by governmental authorities worldwide.

(iv) Given increased multi-jurisdictional scrutiny, ubiquity of whistleblowers who may call government authorities (including employees looking for a payday), the costs of tolerating bribery far exceed any perceived competitive "benefits."

(A) Petrobras is the most recent example of a company that had virtually its entire senior management and board replaced in the wake of the U.S.-Brazilian investigations.

(b) Guard Against Government Overreach.

(i) Scrutinize methodology and legal theories employed by government authorities that may be inconsistent with the legal traditions of the affected jurisdiction.

(A) As noted, in the U.S., the doctrine of *respondeat superior* underlies corporate criminal liability, leading to excessive prosecutorial discretion about charging decisions as well as the penalties to be imposed.

(1) In jurisdictions where this doctrine does not apply or has not been accepted, it may be appropriate to work toward laws or policies that better define the scope of prosecutorial discretion.

(B) Relatedly, the requirement to cooperate with the authorities can sometimes result in unanticipated consequences to the legal system.

(1) Should a company be permitted by law to receive cooperation credit even if it declines to provide prosecutors with detailed and self-incriminating reports of internal investigations?

(2) Shouldn't companies feel free to conduct internal investigations to find the wrongdoing and remediate (including firing the bad actor), without fear that its thorough internal review will be used by prosecutors to increase the punishment of a company?

(C) Similarly, a legal and business community should analyze what purpose is served by demanding that companies self-report.

(1) If a company detects misconduct, thoroughly punishes the wrongdoer, strengthens controls even further, why should it pay a heavier penalty if it did not self-report and the government later finds out about it?

(ii) Stay abreast of the corporate enforcement trends and past experiences of companies and prosecuting offices.

(A) Could help to formulate effective compliance programs

(B) Could be useful in preparing defense presentations to prosecuting agencies.