SPEECH

Acting Assistant Attorney General Nicole M. Argentieri Delivers Keynote Address at the 40th International Conference on the Foreign Corrupt Practices Act

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Remarks as Prepared for Delivery

Thank you so much for having me here today. This event brings together the foremost experts on the Foreign Corrupt Practices Act (FCPA). We have in this room federal prosecutors, U.S. Securities and Exchange Commission (SEC) enforcement attorneys, outside counsel, in-house counsel, chief compliance officers, and more — all of whom know the ins and outs of this specialized area of the law. It's a privilege to be able to address such a sophisticated and knowledgeable group.

This event is an important part of the ongoing dialogue among the department, the defense bar, and the business community — a discussion that shows our commitment to transparency and predictability.

In my time with you all today, I will address four things:

- First, our achievements this year in the fight against corruption and white collar crime;
- Second, how we are actioning the recent corporate enforcement policies announced by the department — policies that built upon longstanding Criminal Division policies and practices in a space where the Criminal Division has long been a leader;
- Third, the Criminal Division's ongoing use of data analytics, and how we are expanding our use of data to enhance our FCPA enforcement efforts; and
- Last, an exciting new resource dedicated to deepening our international partnerships in key parts of the world that will enhance our ability to identify and prosecute foreign bribery offenses and allow us to generate new and impactful cases.

Let me start by looking back at the last year. The Criminal Division had a banner year across its varied efforts in the fight against white collar and corporate crime. I am particularly proud of how we continue to focus on investigating and prosecuting the most complex schemes across different industries that span the globe.

Our FCPA resolution with Corficolombiana, a financial services institution based in Bogota, is a perfect example. Corficolombiana was a member of a joint venture with Odebrecht, the Brazilian construction conglomerate. Through a high-level executive, Corficolombiana agreed to pay more than $23 million in bribes to win a contract to construct and operate a highway toll road, which led to over $28 million in illicit profits.

The company agreed to pay bribes to a variety of high-ranking officials across the Colombian government, including in the executive and legislative branches, as well as at Colombia's state-owned infrastructure agency. Corficolombiana also caused other entities to enter into fake contracts with bribe-paying intermediaries to help carry out the scheme.

As part of a global resolution, Corficolombiana agreed to pay over $80 million. This marked our first ever coordinated resolution with Colombian authorities in a foreign bribery case, and we agreed to credit half of our criminal penalty against payments made to Colombian authorities related to the same conduct.

As this example shows, the Criminal Division continues to prioritize bringing high impact cases. Indeed, this year, the Criminal Division's 11 corporate resolutions and declinations with disgorgement pursuant to our Corporate Enforcement and Voluntary Self-Disclosure Policy involved misconduct across a broad range of industries and regions all around the world.

Let me turn now to individual charges. Our Fraud Section has charged over 240 individuals this year. But that number does not tell the full story. If you take a closer look at the cases, you will see that we are focusing on the worst of the worst offenders who are responsible for crimes that are staggering in scale: This year, we've set a record high in the average alleged loss amount per defendant prosecuted by our Fraud Section — over $25 million per defendant. And that's all on the heels of the record 51 trials that prosecutors from across the Fraud Section conducted in 2022, and the over 40 trials conducted thus far this year.

But distinguishing between corporate and individual cases misses the point. As our white-collar practice has shown, corporate criminal enforcement and individual accountability are two sides of the same coin. Indeed, in connection with the Fraud Section's 2023 corporate resolutions and Corporate Enforcement Policy (CEP) declinations, we have charged 14 individuals. Our corporate enforcement policies encourage companies to voluntarily self-disclose misconduct and cooperate for good reason: It allows us to build stronger cases against culpable individuals more quickly.

As searching as our investigations may be, there are some cases that we may never learn about absent a company's voluntary self-disclosure. And we require those disclosures to be timely so we can preserve evidence more easily, carry out our own investigation into wrongful conduct, interview witnesses before memories fade, and prosecute individuals or other entities before the expiration of the statute of limitations. Several of the cases we have brought to date this year illustrate our policies working as they should. Let me give you an example.

In March, we extended a CEP declination with disgorgement to Corsa Coal. The company's employees and agents had engaged in a scheme to bribe Egyptian government officials to obtain lucrative contracts to supply coal to an Egyptian state-owned and-controlled company. The company voluntarily self-disclosed the misconduct, fully cooperated with our independent investigation, timely and appropriately remediated, and disgorged the profits to the extent of its financial ability and therefore earned a declination under our policy.

As part of its cooperation, the company provided evidence about individual wrongdoers, including two former vice presidents who were charged criminally for their involvement in the scheme. One of these defendants has pleaded guilty and the other is awaiting trial. This is a perfect example of our policies in action: offering appropriate incentives for a company to do the right thing and tell us about a scheme we were not aware of, resulting in criminal charges against culpable executives.

Another good example that showcases the rationale and effect of our emphasis on self-disclosure and cooperation are the H.W. Wood and Tysers Insurance Brokers FCPA resolutions. These cases grew out of the voluntary self-disclosure that resulted in a 2022 CEP declination for Jardine Lloyd Thompson, or JLT, a U.K.-based reinsurance broker. JLT's voluntary self-disclosure and cooperation not only led to the prosecution of four individuals involved in the bribery scheme, but also allowed us to secure the cooperation of those individuals and gather additional evidence demonstrating that others in the industry — namely, H.W. Wood and Tysers (known then as Integro) — were involved in similar misconduct. Building on this evidence, we prosecuted three additional individuals and just last week held HW Wood and Integro to account for their conduct. These cases show the impact a voluntary self-disclosure can have on an industry. Because when we get a self-report, our investigation will not focus on just that company and its employees alone. Instead, we will look to develop cooperators and pull the thread to determine whether other companies and individuals in the industry engaged in similar misconduct, and hold them to account as well.

We also held H.W. Wood and Tysers to account in another way that is now common to our FCPA corporate resolutions. As you will have seen in these and other cases, including the Glencore case from 2022, we are requiring in such cases that, in addition to paying any required criminal penalty, companies must pay appropriate forfeiture. Of course, when entering into a resolution with the department, issuers subject to the SEC's oversight have historically also resolved in parallel with that agency, forfeiting their ill-gotten gains. We typically have credited this disgorgement against any applicable criminal forfeiture.

As recent cases have shown — from Glencore last year and more this year — to treat issuers and non-issuers alike, going forward, all companies should expect to both pay applicable fines and forego the proceeds of their criminal activity, subject of course to our anti-piling on policy and inability to pay guidance.

As these cases show, along with the most recent announcement of a CEP declination in the Lifecore Biomedical case, we're committed to using all the tools in our tool kit to encourage companies to make voluntary self-disclosures. In fact, it's a model we're now using more outside of the FCPA context, as you will have seen in the first ever CEP declination issued in a health care fraud case to HealthSun. The company's voluntary self-disclosure, full cooperation, remediation, and agreement to pay back more than $53 million to the Department of Health and Human Services resulted in a declination. And we were able to charge an executive for allegedly participating in the scheme, which is another example of our policies working as they should.

This year, we have also been using all options when it comes to the appropriate form of our resolutions, including CEP declinations, non-prosecution agreements (NPA), deferred prosecution agreements (DPA), and guilty pleas. We do not hesitate to require a guilty plea where the circumstances warrant it, particularly where the nature and circumstances of the offense are especially egregious.

There's no better example of this than the groundbreaking and sophisticated resolution the Money Laundering and Asset Recovering Section (MLARS) reached just last week. MLARS has long brought complex corporate cases, particularly focused on financial institutions, and last week we announced the first

corporate resolution with a cryptocurrency exchange — Binance — and imposed forfeiture and fine amounts totaling approximately $4.3 billion.

Binance engaged in an extensive scheme to operate as a U.S. financial institution while disregarding U.S. law. In doing so, they put U.S. customers, the U.S. financial system, and U.S. national security at risk, all in the name of profits. The scheme went to the very top: the company's CEO also pleaded guilty.

This is one of the largest corporate criminal resolutions in the department's history. It is by far the largest corporate criminal resolution that included charges against the company's CEO. And it is one more example of MLARS' long record of holding financial institutions that violate U.S. sanctions accountable. To date, MLARS has imposed over $16 billion in penalties on financial institutions that violate sanctions and threaten our financial system.

This historic resolution exemplifies the kind of global work the Criminal Division has always undertaken to protect U.S. markets and U.S. national security. From FCPA to financial institution sanctions cases, the Criminal Division has been a leader in dismantling criminal schemes that threaten citizens, markets, and the national security of the United States.

We have required guilty pleas in other cases this year as well. Take our March 2023 resolution with Ericsson. The company agreed to plead guilty to two FCPA-related charges filed in connection with its 2019 DPA. The company failed to timely disclose requested, and highly relevant, documents, prejudicing the government's ability to charge certain individuals, and also failed to fully and timely disclose information related to extremely problematic bribery-related conduct in Iraq. Ericsson also agreed to pay an additional $200 million in penalties – including the elimination of the reduction for cooperation originally provided under the CEP – and its monitor was extended for another year. The message should be clear – when we enter into a criminal resolution, we are committed to the follow-through and to holding companies to the letter of our agreements; if not, there will be consequences.

Contrast these cases with those warranting a DPA. Recall H.W. Wood and Tysers. There, the misconduct was not as extensive. The bribery involved relatively lower-level employees and misconduct in only one country. Although the conduct was certainly criminal and worthy of prosecution — indeed, we have prosecuted eight individuals relating to these cases and the JLT CEP declination — after applying our policies and considering our precedent, we did not require a corporate guilty plea.

But regardless of whether the resolution is through a guilty plea, a DPA, or even an NPA, the companies' obligation — including obligations to accept responsibility, pay appropriate penalties, cooperate, disclose any new potential misconduct, remediate past misconduct, and enhance compliance programs — remain largely the same. And to receive a CEP declination, a company must also step up and do the right thing. They must report misconduct to DOJ before we learn about it from another source; fully cooperate with the DOJ's investigation (and agree to continue to do so); enhance their compliance program to remediate the misconduct; and disgorge any profits from the misconduct or compensate any victims. All of this helps ensure that we achieve one of our main goals: to create a better culture of compliance, so that companies can prevent misconduct from happening in the first place and detect and remediate misconduct when it occurs.

What should be clear is that all of the cases I have discussed involved incredibly complex, sophisticated schemes, and that our dedicated prosecutors worked hard to hold the culpable individuals and corporations accountable. Those are just the sort of cases we want to tackle head on.

Let me turn to my second point. In addition to the complexity and scope of the white-collar cases we prosecute, what really sets the Criminal Division apart is our role as the department's thought leader in white collar and corporate enforcement policy. This year you have all undoubtedly seen a large number of new policy developments: revisions to our CEP, which, among other things, increased the incentives for voluntary self-disclosures; updates to our evaluation of corporate compliance programs, showing how prosecutors will consider a company's approach to ephemeral and encrypted messaging platforms; the Criminal Division's Pilot Program on Compensation Incentives and Clawbacks; and the department-wide mergers and acquisitions (M&A) voluntary self-disclosure policy.

I am sure you all have read and analyzed the text of these policies. I know I saw your client alerts describing them in detail. But I also know the rubber really meets the road when the Criminal Division puts these policies into practice. So in keeping with our commitment to transparency and predictability, let me identify some themes that emerge from how the Criminal Division is implementing these policies – in particular, the revised CEP.

The benefits of a voluntary self-disclosure are clear. When coupled with full cooperation and timely and appropriate remediation, a company can benefit from a presumption of a declination. But even where a company does not make a voluntary self-disclosure, it can still receive significant benefits under our policies.

As you know, the previous maximum discount under the CEP where a company did not voluntarily self-disclose but fully cooperated and timely and appropriately remediated would have been only 25%. Now, of course, the cap is 50%. With a number of resolutions now established under the new CEP, you can begin to identify factors that set strong cooperation and remediation apart from less impressive efforts — which can unlock these higher discounts.

Of course, every case is different, and drawing hard and fast rules is nearly impossible. But we are committed to transparency and want to offer as much guidance as we can. Accordingly, as I describe certain cases that fell within the zero to 50% discount range, you can glean some facts that contributed to particular reductions. In this context, don't focus solely on cooperation and forget the importance of remediation. Not only will a company's remediation inform our decision as to whether or not an independent compliance monitor is warranted, but it also weighs significantly in our determination of the appropriate fine reduction. And don't forget, every company starts with zero credit and must earn any benefit.

At the high end of the zero to 50% range, consider the Albemarle resolution from September of this year. Albemarle, a publicly traded chemicals manufacturing company headquartered in North Carolina, entered into a three-year NPA for agreeing to pay bribes to government officials in three different countries. The company agreed to pay a penalty of approximately $98.2 million and to forfeit approximately $98.5 million in ill-gotten gains in addition.

The company received the first ever fine reduction under our clawback pilot program. It also received a 45% reduction for cooperation and remediation, the highest ever under our revised CEP. What helped set Albemarle apart?

Many companies that seek to cooperate with our investigations or remediate misconduct often strive to do the same types of things: review documents and records and interview witnesses as part of an internal investigation; produce and translate documents; give periodic updates about the factual evidence identified during an internal investigation; take appropriate action against culpable employees. But very often, what makes the difference between how companies ultimately fare is the speed of a company's actions, which is a

critical measure of its cooperation and remediation. It's often a matter of degree, not kind. We provide the greatest benefits to those that act with urgency and truly go above and beyond.

That's precisely what Albemarle did. The company cooperated extensively. And it also engaged in significant and timely remediation. Even before our investigation began, the company commenced remedial measures based on its internal investigation. Beginning almost immediately after identifying the misconduct, the company engaged in continuous testing, monitoring, and improvement of all aspects of its compliance program. The company also withheld bonuses from culpable individuals during the course of its internal investigation, even before we announced the Clawback Pilot Program. Albemarle transformed its business model and risk management process to reduce the corruption risk in its operation, including by eliminating the use of sales agents — which had paid the bribes at issue in our case. And Albemarle also voluntarily — albeit belatedly — reported the misconduct to the Fraud Section, which weighed heavily in our analysis.

Let this case be an example for companies considering how to achieve the best result under our policies.

Other companies, such as H.W. Wood and Tysers — which agreed to pay bribes to Ecuadorean officials through their employees and agents to obtain reinsurance business from state-owned enterprises — received reductions in the middle of the range, 25%. Among other things, these companies produced documents held overseas, made (or endeavored to make) foreign-based employees available for interviews, made several detailed factual presentations, and produced financial analyses of voluminous transactions. The companies also engaged in timely remedial measures tailored to the misconduct. For instance, Tysers terminated all business and affiliations with the intermediary company involved in the misconduct at issue and made enhancements to the governance and oversight of its compliance program. W. Wood terminated an employee involved in the misconduct and implemented a process to ensure continuous monitoring and review of third-party relationships. But aspects of the companies' cooperation were more reactive than proactive. In addition, their assistance to our investigation was not as significant as in other cases. Taken together, these facts warranted a reduction of 25%.

Again, let me stress that there is no precise formula in this space. We assess everything the company has done (and hasn't done), the speed and consistency with which it acted (or failed to act), and how (if at all) that has aided our own, independent investigation. We carefully assess the company's efforts to understand the root causes of the wrongdoing and timely and appropriately remediate the misconduct. We evaluate past practice and use our reasoned judgment in light of all of the facts and circumstances.

I'd like to now turn to our use of data. In the Criminal Division, we too are going above and beyond in our effort to combat white collar crime. We are not just waiting for companies to self-report, or witnesses to come forward, or for anomalies to reveal themselves on a one-off basis. Let me be the first to tell you that we have proactively used data to generate FCPA cases, and we've only just gotten started.

From health care fraud to procurement fraud to our use of 10b5-1 data and trading plans in the securities space, the Criminal Division has long been an innovator in using data to enhance its investigations and prosecutions. I am proud to announce that we are taking that experience and expertise with data analysis and applying these tools to our FCPA investigations. Through investments in personnel, we have improved our ability to harness and analyze available data — both public and non-public — to identify potential wrongdoing involving foreign corruption. This approach has already generated successful FCPA investigations and prosecutions.

Take, for instance, the case against Arturo Murillo, the former Minister of the Government of Bolivia, among others. Murillo was sentenced earlier this year to 70 months in prison after pleading guilty to money laundering conspiracy. Murillo received over $500,000 in bribe payments in exchange for helping a Florida-based company secure an approximately $5.6 million contract to provide tear gas and other non-lethal equipment to the Bolivian Ministry of Defense.

We proactively developed this case by looking at information and data available to the department, including from financial records. As a result of the successes in the case, our investigation expanded and is continuing to yield results.

Going forward, we are going to double down on these efforts to allow us to identify additional misconduct that may otherwise have gone undetected and bring to bear even more data, along with tools that can interpret and synthesize that information. So, I suggest that companies take note of these efforts when considering the tough decision of whether or not to disclose misconduct.

Just as we are upping our game when it comes to data analytics, we expect companies to do the same. In fact, we cited in Albemarle's NPA its use of data analytics to monitor and measure its compliance program's effectiveness as an example of its extensive remediation. Companies have better and more immediate access to their own data, and you can be sure that, if misconduct occurs, our prosecutors are going to ask what the company has done to analyze or track its own data — both at the time of the misconduct and when we are considering a potential resolution.

This is not the only innovation we are bringing to the FCPA space.

At this event last year, I explained how important international partnerships are to FCPA and white-collar criminal enforcement. Corruption jeopardizes our collective security by weakening democratic processes and empowering corrupt government officials in other countries. It undermines the rule of law and provides a breeding ground for other crime and authoritarian rule around the globe.

The Justice Department cannot succeed in combating corruption on our own. Criminals involved in bribery move across international borders, as do the illicit proceeds of their crimes. To effectively fight these offenses, strong partnerships and cooperation with our international counterparts is mission critical. We are already pacesetters in this space, leading groups such as the OECD Working Group on Bribery's Law Enforcement Officials group. Working with foreign authorities allows us to be force multipliers. It makes evidence easier to obtain, leaves criminals fewer places to hide, and helps us recover criminal proceeds wherever they may be found. International cooperation also amplifies the deterrent value of corporate prosecutions — companies and their employees should understand that now, more than ever before, law enforcement partners around the world are working together to tackle complex financial crime.

As our recent cases show, we are regularly working with a large number of foreign law enforcement partners across the full range of our investigations and engagements. Look at all of this year's cases that involve misconduct in multiple countries and often coordination with foreign authorities. In fact, just days after my remarks here last year, our FCPA Unit entered into a corporate resolution with Swiss company ABB, which was coordinated with South African authorities — a first. And as I mentioned, this year we achieved our first ever coordinated resolution with Colombian authorities in the Corficolombiana matter.

I am proud to announce a new resource in our fight against corruption: the International Corporate Anti-Bribery initiative, or ICAB, which will be driven by three experienced prosecutors, who will build on our existing bilateral and multilateral partnerships, as well as form new partnerships. We will start by focusing on

regions where we can have the most impact in both coordination and case generation, with a focus on key threats to financial markets and the rule of law.

This initiative will leverage our prosecutors' particular experience, expertise, and language skills, which will allow them to build relationships with counterparts around the world to facilitate cooperation and information sharing. All of this will enhance our ability to identify — and to effectively investigate and prosecute — foreign bribery offenses affecting these regions.

Each member of this FCPA Unit initiative will work collaboratively, as appropriate, across the Criminal Division — including with MLARS, the Office of International Affairs, the Office of Overseas Prosecutorial Development, Assistance, and Training, and the International Criminal Investigative Training Assistance Program — as well as with colleagues in other parts of the department, our law enforcement partners, and the State Department. The initiative's members will also work with the data experts in Fraud and MLARS to develop proactive leads in their respective regions and determine how we can force multiply and assist foreign authorities in their parallel investigations.

Empowering experienced anti-bribery prosecutors to build critical relationships with our international counterparts in key parts of the world will result in enhanced information sharing, cooperation, and case development with our foreign partners. This is yet another reason companies considering whether or not to disclose misconduct should take note — call us before we, or our foreign partners, call you.

Let me end where I started. 2023 has been a stand-out year for the Criminal Division in the fight against corruption and white-collar crime. Through the hard work and dedication of our career prosecutors and staff, we have brought, and will continue to bring, the most complex, impactful cases. Doing so allows us to root out misconduct, punish culpable individuals, and incentivize companies to act as good corporate citizens. I am immensely proud of our prosecutors' work and look forward to our continued success.

Thank you for your time.

Speaker

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Topics

FINANCIAL FRAUD | SECURITIES, COMMODITIES, & INVESTMENT FRAUD | FOREIGN CORRUPTION | HEALTH CARE FRAUD

Components

Criminal Division | Criminal - Criminal Fraud Section | Criminal - International Criminal Investigative Training Assistance Program | Criminal - Money Laundering and Asset Recovery Section | Criminal - Office of International Affairs | Criminal - Office of Overseas Prosecutorial Development, Assistance & Training