



Alert

White Collar Defense and Investigations and
Securities Litigation and Enforcement
Client Service Groups

To: Our Clients and Friends

September 19, 2014

Holder: Presumption of Innocence Stands in Financial Fraud Cases . . . For Now

Attorney General Holder on Wednesday outlined three initiatives designed to simplify the Department of Justice's prosecution of persons allegedly involved in corporate financial wrongdoing. He stopped just short, however, of urging the courts to abandon the centuries-old presumption of innocence in criminal prosecutions.

First, the Attorney General remarked that, in many corporations, "the buck still stops nowhere." To remedy this perceived problem, the Attorney General suggested that companies should be required to designate—apparently in advance—persons who would bear criminal responsibility for corporate wrongdoing. The Attorney General mentioned with approval a British law that "required financial companies to designate an officer who would be accountable for misconduct at the firm." He also referred to the Sarbanes-Oxley certification requirements, and to the "responsible corporate officer" doctrine of the Food, Drug, and Cosmetic Act, and observed that "[w]e ought to consider this further and modify our laws where appropriate."

The Attorney General did remark that "it would be going too far to suggest reversing the presumption of innocence for any executive," but he did not explain how the presumption of innocence could be squared with the notion of a pre-designated "accountable" executive.

Second, the Attorney General noted that evidence of criminal intent is "often elusive." To better enable the DOJ to obtain such evidence, the Attorney General suggested increased financial incentives for whistleblowers under the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"). The Attorney General suggested raising potential whistleblower recovery from a "paltry" \$1.6 million allowed by FIRREA to "False Claims Act levels," presumably meaning some substantial percentage of the government's total recovery.

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Third, the Attorney General called for the FBI to receive more resources for white-collar investigations, including additional “white-collar agents, experts, and analysts.”

The Attorney General’s remarks were delivered before an audience of judges, United States Attorneys, and corporate compliance enforcers.

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