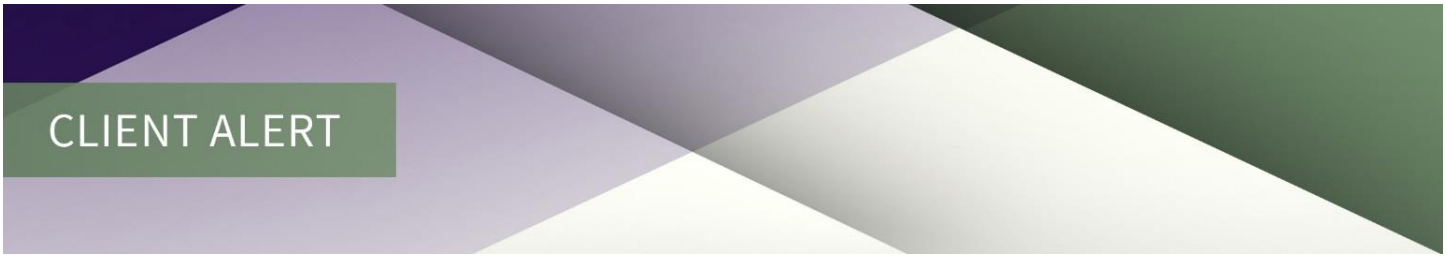

DOJ Declines Prosecution in First Case Under New Leniency Policy

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In a letter dated April 23, 2018, the U.S. Department of Justice (the "DOJ") informed business-data company Dun & Bradstreet ("D&B" or the "Company") that it was declining prosecution of Foreign Corrupt Practices Act ("FCPA") violations that the Company had voluntarily disclosed to the DOJ and the U.S. Securities and Exchange Commission ("SEC"). The declination of prosecution is the first under the DOJ's new FCPA Enforcement Policy ("the Enforcement Policy") based on self-reporting, cooperating, and taking remedial measures as required to qualify for a declination under the new Enforcement Policy.

At the same time as the DOJ declination, the Company entered into an administrative consent order with the SEC in which, without admitting or denying wrongdoing, the Company will be required to pay $9.2 million, consisting of $6.1 million in disgorgement of profits gained from its misconduct, prejudgment interest of $1.1 million, and a civil monetary penalty of $2 million.

The Enforcement Policy, announced last November, allows companies that self-disclose FCPA violations to avoid any criminal charges, absent "aggravating circumstances," provided they meet the Enforcement Policy's requirements related to cooperation and remediation. The Enforcement Policy went a significant step further than the prior FCPA "pilot program," in effect since April 5, 2016. Under the pilot program, the DOJ provided more limited incentives for self-disclosure, merely pledging to companies that they might receive a range of benefits, such as lower fines, but without creating a presumption of a declination.

The Enforcement Policy defines the criteria to qualify for a declination, including "voluntary self-disclosure," "full cooperation," and "timely and appropriate remediation." "Voluntary self-disclosure" requires a company to disclose "all relevant facts" prior to "an imminent threat of disclosure or government investigation" and "within a reasonably prompt time after becoming aware of the offense." "Full cooperation" requires "proactive cooperation," including timely disclosing of relevant facts, preserving relevant documents, and, if requested, making witnesses available for interviews. "Timely and appropriate remediation" requires a company to remediate the root causes of the underlying misconduct, to discipline relevant employees, and to implement an effective compliance and ethics program.

The Enforcement Policy states that even where aggravating circumstances are present, companies that self-disclose, cooperate, and remediate fully (1) will receive an automatic "50% reduction off of the low end of the U.S. Sentencing Guidelines (U.S.S.G.) fine range, except in the case of a criminal recidivist," and (2) "generally" will not be required to appoint an independent compliance monitor as long as the company has "an effective compliance program" "at the time of resolution." In addition, the Policy affords companies that do not self-disclose a 25% fine reduction as long as they cooperate and remediate issues fully. The Enforcement Policy crystalizes the incentives for self-disclosure by creating a presumption in favor of a declination for self-disclosure that meets the relevant standards and by granting automatic penalty reductions to companies that cooperate and remediate misconduct. In its declination letter to D&B, the DOJ states:

> We have reached this conclusion despite the bribery committed by employees of the Company's subsidiaries in China. We based this decision on a number of factors, including but not limited to: the fact that the Company identified the misconduct; the Company's prompt voluntary self-disclosure; the thorough investigation undertaken by the Company; its full cooperation in this matter, including identifying all individuals involved in or responsible for the misconduct, providing the Department all facts relating to that misconduct, making current and former employees available for interviews, and translating foreign language documents to English; the steps that the Company has taken to enhance its compliance program and its internal accounting controls; the Company's full remediation, including terminating the employment of 11 individuals involved in the China misconduct, including an officer of the China subsidiary and other senior employees of one subsidiary, and disciplining other employees by reducing bonuses, reducing salaries, lowering performance reviews, and formally reprimanding them; and the fact that the Company will be disgorging to the SEC the full amount of disgorgement as determined by the SEC.

The SEC settlement reflects that the underlying misconduct involved two indirect D&B subsidiaries in China that made unlawful payments to win or keep business from 2006 through 2012. According to the SEC's order and press release, "the two Chinese subsidiaries used third-party agents to make unlawful payments to obtain data vital to Dun &

Bradstreet's business as a provider of business financial information." One subsidiary, part of a joint venture with a Chinese company, acquired nonpublic financial statement information on Chinese entities by making unlawful payments to Chinese government officials, and the second subsidiary made improper payments to third parties to acquire nonpublic personal data. The SEC alleged that the illegal payments were not properly recorded in the Company's books and that the Company's accounting controls were too weak to detect the problem.

Despite these facts, the DOJ declined prosecution because, as noted in its declination letter, D&B voluntarily disclosed the matter, cooperated with the investigation, and worked to improve its compliance program and accounting systems. In addition, the DOJ cited the fact that D&B terminated the employment of 11 individuals involved in the misconduct, disciplined others, and will pay the SEC the full amount of disgorgement determined by the SEC.

The DOJ's declination in this case is significant as it is the first company to avoid prosecution under the new FCPA Enforcement Policy. It is important to highlight, however, as reflected in the considerations set forth in the Policy and the DOJ declination letter quoted above, that the DOJ still retains considerable leeway in crafting FCPA resolutions and determining whether to decline criminal charges. At the time the new Policy was announced, Deputy Attorney General Rosenstein made a point of stating that the "new policy does not provide a guarantee," specifying that "prosecutorial discretion" remains "central to ensuring the exercise of justice." Even so, the D&B case shows that companies that discover potential FCPA issues should consider a potential voluntary disclosure in the context of these more significant potential benefits. And even though the SEC, which has civil enforcement authority over FCPA violations by issuers, has not implemented a similar policy, it continues, less formally, to reward companies that engage in voluntary disclosure, cooperation, and remediation.

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