

## President Trump Signs Executive Order Pausing Enforcement of the U.S. Foreign Corrupt Practices Act

February 12, 2025

### Contact

**Dara A. Panahy, Partner**  
+1 202.835.7521  
[dpanahy@milbank.com](mailto:dpanahy@milbank.com)

**Bijan Ganji, Partner**  
+1 202.835.7543  
[bganji@milbank.com](mailto:bganji@milbank.com)

**John Beahn, Partner**  
+1 202.835.7520  
[jbeahn@milbank.com](mailto:jbeahn@milbank.com)

On February 10, 2025, President Donald J. Trump issued an executive order (the “Executive Order”) directing a pause in enforcement of the U.S. Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), a U.S. law that prohibits bribery of foreign government officials in connection with international business transactions. Based on accompanying statements by the Trump Administration (the “Administration”), issuance of the Executive Order is intended to advance the Administration’s goals of protecting and promoting the competitiveness of U.S. businesses in the international economic arena by rebalancing the allocation of federal law enforcement resources based on the Administration’s policies and priorities.

Specifically, the Executive Order directs U.S. Attorney General (“AG”) Pamela Bondi to pause enforcement of the FCPA for an initial period of 180 days, and potentially a further 180 days if deemed appropriate by the AG, while also taking the following additional actions:

- Refrain from initiation of any new FCPA investigations or enforcement actions by the U.S. Department of Justice (“DOJ”), except where the AG determines that an individual exception should be made;
- Review ongoing FCPA investigations and enforcement actions by the DOJ and “take appropriate action with respect to such matters to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives”; and
- Issue updated guidelines or policies, as appropriate, to reflect the Administration’s priority to ensure that such guidelines and policies “adequately promote the President’s Article II authority to conduct foreign affairs and prioritize American interests, American economic competitiveness with respect to other nations, and the efficient use of Federal law enforcement resources.”

The Executive Order states that any new FCPA investigations or enforcement actions initiated, or ongoing investigations or actions continued, after such revised guidelines or policies are issued will be governed by such policies or guidelines and must be specifically authorized by the AG. The Executive Order also provides that the AG shall determine whether additional actions, including remedial actions, are warranted with respect to “inappropriate” past FCPA investigations and enforcement actions, and that the AG shall either take such actions or, if Presidential action is required, recommend such actions to the President.

## Potential Changes in Enforcement Guidelines

The Executive Order focuses on broad economic, foreign policy and national security considerations, stating that the President's foreign policy is "inextricably linked with the global economic competitiveness of American companies" and that U.S. national security is dependent on such companies "gaining strategic business advantages whether in critical minerals, deep-water ports, or other key infrastructure or assets." Accordingly, while the scope and substance of the forthcoming new FCPA enforcement guidelines remain unclear, such guidelines may: (a) emphasize FCPA enforcement discretion; (b) deemphasize certain categories of activities in light of market realities and foreign competitor practices; or (c) establish priorities for FCPA enforcement based on (i) particular industries or markets, (ii) an assessment of the prevailing competitiveness of U.S. businesses in such industries or markets and (iii) associated foreign policy and national security interests. It is also unclear whether, or to what extent, such guidelines will align with a directive that was issued by the AG last week to redirect DOJ resources toward the prioritization of investigation and enforcement actions focused on criminal cartels and transnational criminal organizations.

## Key Takeaways

The temporary pause in FCPA enforcement, as directed by the Executive Order, does not alter the scope or substance of the FCPA, its jurisdictional requirements or the elements of a violation thereof, and the statute of limitations for a violation of the FCPA remains unchanged at five years, subject to extension under certain circumstances. Therefore, any violation of the FCPA that may occur during such pause in enforcement would remain subject to possible investigation and enforcement action in the future, including by authorities under a successor U.S. Presidential administration, for the full duration of the applicable statute of limitations period. As noted above, the Executive Order also permits the AG to exercise discretion in initiating new FCPA investigations or enforcement actions during such pause in enforcement.

For these reasons, the Executive Order is not expected, by itself, to produce a significant or lasting change in the FCPA compliance environment, though the forthcoming new FCPA enforcement guidelines may be perceived as temporarily incrementally altering the risk profile of certain transactions and contexts, thereby complicating compliance efforts by U.S. businesses and foreign issuers subject to the FCPA. It will remain critical to maintain, administer and enforce FCPA compliance policies and procedures, and to evaluate and address FCPA compliance risks, on an ongoing basis, including on a transaction-by-transaction basis, during such pause in enforcement and thereafter. Please feel free to reach out to your Milbank contacts with any particular questions or concerns regarding these developments or FCPA compliance and risk management more broadly.

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This Client Alert is a summary of developments relating to changes in FCPA enforcement practices and policies and is not comprehensive as to the full scope of the FCPA, possible changes to enforcement of the FCPA or any other U.S. laws.

## Global Risk & National Security Practice

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Washington, DC | 1850 K Street, NW, Washington, D.C. 20006

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Dara Panahy	<a href="mailto:dpanahy@milbank.com">dpanahy@milbank.com</a>	+1 202.835.7521
Bijan Ganji	<a href="mailto:bganji@milbank.com">bganji@milbank.com</a>	+1 202.835.7543
John Beahn	<a href="mailto:jbeahn@milbank.com">jbeahn@milbank.com</a>	+1 202.835.7520
Nola Heller	<a href="mailto:nheller@milbank.com">nheller@milbank.com</a>	+1 212.530.5108
Gurbir Grewal	<a href="mailto:ggrewal@milbank.com">ggrewal@milbank.com</a>	+1 212.530.5775
Tawfiq Rangwala	<a href="mailto:trangwala@milbank.com">trangwala@milbank.com</a>	+1 212.530.5587
Olivia Choe	<a href="mailto:ochoe@milbank.com">ochoe@milbank.com</a>	+1 202.835.7511
Matthew Laroche	<a href="mailto:mlaroche@milbank.com">mlaroche@milbank.com</a>	+1 212.530.5514
Lafayette Greenfield II	<a href="mailto:lgreenfield@milbank.com">lgreenfield@milbank.com</a>	+1 202.835.7500
Brian Murff	<a href="mailto:bmurff@milbank.com">bmurff@milbank.com</a>	+1 202.835.7557
Lauren Trushin	<a href="mailto:ltrushin@milbank.com">ltrushin@milbank.com</a>	+1 202.835.7559

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