BRIEFING PAPERS® SECOND SERIES

PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

DOJ Export Controls And Economic Sanctions Enforcement Guidance Likely To Impact Government Contractors, Parallels FCPA Pilot Program

*By Thomas R.L. Best, Jack R. Hayes, Andrew D. Irwin, Edward J. Krauland, and Lucinda A. Low**

On October 2, 2016, the U.S. Department of Justice's National Security Division (DOJ NSD) published a memorandum setting out the policy framework for negotiated resolutions of export control and economic sanctions investigations with potential criminal liability.[1] Titled "Guidance Regarding Voluntary Self-Disclosures, Cooperation, and Remediation in Export Control and Sanctions Investigations Involving Business Organizations" (the Guidance), the policy statement is intended to establish incentives for companies[2] investigating potential export controls and economic sanctions issues to voluntarily disclose them to the DOJ NSD, and, where those companies meet the announced cooperation, remediation, and compliance standards, to provide significantly more favorable resolution terms than would otherwise have been available or afforded.[3] It is particularly relevant to U.S. Government contractors.

This announcement by the DOJ NSD is significant in a number of respects, both in the export controls and trade sanctions space specifically, and with regard to efforts to manage the regulatory risks arising from international business activities. While criminal risks in this area are not new, contractors will now routinely need to assess the benefits and risks of voluntarily disclosing not only to the primary administrative agencies enforcing trade regulations (the U.S. Department of State, Directorate of Defense Trade Controls (DDTC); the U.S. Department of Commerce, Bureau of Industry & Security (BIS); and the U.S. Department of the Treasury, Office of Foreign Assets Controls (OFAC)),[4] but also to the DOJ NSD, in the face of a clear policy statement from a criminal prosecuting authority that it expects contractors to do so when such potential violations may be "willful"[5]—a standard that could capture significant amounts of export controls and economic sanctions issues that may not have historically been disclosed to or investigated by the DOJ.

*Thomas R.L. Best, Jack R. Hayes, Andrew D. Irwin, Edward J. Krauland, and Lucinda A. Low are members of the International Regulation & Compliance Group in Steptoe's Washington, D.C. office. Their practice focuses on international regulatory compliance in the context of internal investigations, enforcement matters, mergers and acquisitions, and related counseling, including for U.S. Government contractors.

IN THIS ISSUE:

THOMSON REUTERS

The Guidance also likely signals the DOJ NSD's intent to be more active in export controls and economic sanctions investigations and enforcement than it has in the past, perhaps taking a page out of the DOJ's U.S. Foreign Corrupt Practices Act (FCPA)[6] enforcement playbook, managed by the DOJ's Criminal Division (DOJ CD). Indeed, the Guidance draws on many of the concepts undergirding the DOJ CD's FCPA "Pilot Program" announced April 5, 2016, which set out the conditions the DOJ CD's Fraud Section requires companies to meet in order to be eligible for cooperation credit (including full declinations of prosecution) in FCPA matters.[7] But there are also significant differences, likely reflecting the national security dimension of export controls and many sanctions regimes and the Government's view that contractors in this area are "gatekeepers" of technology, software, know-how, or related services subject to U.S. jurisdiction.[8]

As with the FCPA Pilot Program, contractors must voluntarily disclose, cooperate— including turning over all information regarding individuals, per the terms of Deputy Attorney General Sally Quillian Yates' September 9, 2015 memorandum on "Individual Accountability for Corporate Wrongdoing" (the *Yates* memorandum)[9]—and remediate to be eligible for the full "credit" (i.e., beneficial resolution terms) the DOJ NSD is offering in this area.[10] They may also need to agree to disgorge and/or forfeit any ill-gotten gains from the conduct at issue in order to resolve the matter.[11] In contrast to the FCPA Pilot Program, however, a nonprosecution agreement (NPA), not a declination, is the most lenient resolution form available.[12]

This Briefing Paper summarizes the DOJ NSD's Guidance and compares it in more detail to the FCPA Pilot Program.

Guidance Summary

The DOJ NSD's Guidance applies where the conduct is "willful,"[13] as set out in the U.S. Supreme Court's 1998 decision in *Bryan v. United States*.[14] Under the *Bryan* definition, an act is "willful" if done with the knowledge that it is illegal.[15] However, the Government need not show that the defendant was aware of the specific law, rule, or regulation that its conduct may have violated.[16]

If a contractor identifies a willful violation of U.S. export controls and economic sanctions laws, executive orders, or regulations, then the Guidance provides a framework by which a contractor that (1) voluntarily self-discloses the issues to the DOJ NSD's Counterintelligence and Export Controls Section (CES), (2) cooperates fully with the CES, and (3) engages in timely and appropriate remediation, may be eligible for reduced criminal penalties and/or a nonprosecution agreement (NPA) or deferred prosecution agreement instead of a criminal plea. The Guidance defines in detail the DOJ NSD's criteria for each of these requirements and explicitly states that contractors that do not meet the applicable standards will not be eligible for the full "credit" offered.[17] Notably, even where full credit is afforded, the Guidance does not offer contractors the prospect of a declination of prosecution by the DOJ NSD. Instead, an NPA (along with disgorgement of ill-gotten gains and any criminal fine) is the most lenient resolution foreseen by the Guidance, and applicable regulatory authorities—OFAC, BIS, and/or DDTC—may still bring their own enforcement actions for civil violations of law.[18]

Voluntary Self-Disclosure

Three requirements must be met for a self-disclosure to be considered voluntary:

(1) Pursuant to the U.S. Federal Sentencing Guidelines

Editor: Valerie L. Gross

Briefing Papers® (ISSN 0007-0025) is published monthly, except January (two issues) and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Customer Service: (800) 328-4880. Periodical Postage paid at St. Paul, MN. POSTMASTER: Send address changes to Briefing Papers, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

§ 8C2.5, the disclosure must occur before "imminent threat of disclosure or government investigation";

(2) The disclosure must be made within a "reasonably prompt time" after the entity learns of the violation, with the contractor bearing the burden of demonstrating timeliness; and

(3) The contractor must disclose known relevant facts, *including* those pertaining to the specific individuals involved in the violations.[19]

The Guidance makes clear that if a whistleblower has reported an incident to the U.S. Government, but the contractor is unaware of this fact and discloses to the DOJ NSD prior to being made aware of the U.S. Government's investigation, such a disclosure would still be considered voluntary.[20] This statement is notable in that other agencies, such as OFAC, would not ordinarily treat this type of report as a voluntary self-disclosure (although the agency has discretion to afford mitigation credit). This position likely reflects the DOJ's response to questions raised about this fact pattern after the release of the FCPA Pilot Program.

Full Cooperation

In assessing the level of cooperation provided, in addition to satisfying the factors set out in the *Principles of Federal Prosecution of Business Organizations*,[21] DOJ NSD prosecutors will consider "the scope, quantity, quality, and timing of cooperation" and will evaluate the quality of a contractor's cooperation on the facts and circumstances of each situation,[22] against the following criteria:

(1) Consistent with the *Yates* memorandum, disclosure on a timely basis of all facts relevant to the wrongdoing at issue, including all facts related to involvement in the criminal activity by the corporation's officers, employees, or agents;

(2) Proactive, as opposed to reactive, cooperation;

(3) Preservation, collection, and disclosure of relevant documents and information relating to their provenance;

(4) Provision of timely updates on a contractor's internal investigation, including production of information and documents on a rolling basis;

(5) When requested, de-conflicting an internal investigation with a Government investigation;

(6) Provision of all facts relevant to potential criminal conduct by all third-party contractors (including their officers or employees) and third-party individuals;

(7) Making employees and officers (including those overseas) available to be interviewed by the DOJ upon request;

(8) Facilitating third-party production of documents and witnesses from foreign jurisdictions unless legally prohibited; and

(9) Translating relevant documents where requested.[23]

The Guidance makes clear that, pursuant to the U.S. Attorneys' Manual 9-28.720, contractors are not required to waive attorney-client privilege or work product protection in order to receive cooperation credit.[24] It also acknowledges that smaller contractors may not have the resources to undertake all of the listed requirements, but places on the contractor the burden of demonstrating why it is unable to meet the requirement in question.[25]

These requirements are not new, particularly for U.S. Government contractors that routinely investigate or assess matters involving potential False Claims Act violations, and are virtually identical to those set forth in the FCPA Pilot Program.[26]

Timely And Appropriate Remediation

The Guidance is clear that credit for remediation, and therefore the benefits available from the DOJ NSD, will only be available to a contractor deemed to have cooperated, as defined above.[27] If so, a contractor "generally" will be required to meet three conditions to receive credit for timely and appropriate remediation:

(1) Implementation of an effective compliance program;

(2) Appropriate discipline of employees involved in the misconduct and their supervisors, including compensation impact; and

(3) Any additional steps recognizing the seriousness of the misconduct, demonstrating acceptance of responsibility, and reducing the risk of recidivism.[28]

The Guidance sets out the following criteria for an effective compliance program:

(1) Establishing a culture of compliance;

(2) Dedicating sufficient resources to compliance;

(3) Ensuring compliance personnel are appropriately

qualified and experienced, and that they are appropriately compensated;

(4) Instituting an independent compliance function;

(5) Performing effective risk assessment and tailoring the compliance program to address the risks identified;

(6) Implementing a technology control plan and regular required training to ensure export-controlled technology is appropriately handled; and

(7) Implementing a reporting structure that allows problems to reach senior company officials and maximizes timely remediation.[29]

The remediation requirements place specific emphasis on employee discipline, including possible termination of wrongdoers.

By and large these requirements are not new, but reflect more general thinking about effective compliance programs. The last two elements—a technology control plan with regular training and reporting that maximizes timely remediation—are tailored to this area and may already be a part of many U.S. Government contractor's export compliance programs.

Aggravating Factors

The Guidance lists several aggravating factors that may result in less credit to contractors that self-disclose, cooperate, and remediate (although more credit than to those contractors that have not self-reported[30]):

(1) Exporting items controlled for nuclear nonproliferation or missile technology reasons to a proliferator country;

(2) Exporting items known to be used in weapons of mass destruction or to terrorist organizations;

(3) Exporting military items to hostile powers;

(4) Repeated violations of similar conduct;

(5) Knowing involvement of upper management; and

(6) Significant profits from the criminal conduct when compared to lawfully exported products and services.[31]

Although these examples are illustrative, they seem to suggest the DOJ NSD will focus on cases where there could be harm to U.S. national security and foreign policy objectives. Interestingly, the final aggravating factor appears to set the stage for disgorgement as a penalty (discussed below), even though the authority to impose disgorgement (or the standard for calculating disgorgement) does not appear in any of the export control or sanctions regulations promulgated by DDTC, BIS, or OFAC.

Benefits Available To Corporations

Where a contractor meets the requirements enumerated above, it may be eligible for the following benefits:

(1) Reduced fines and forfeiture amounts;

(2) The possibility of an NPA;

(3) A reduced period of supervised compliance; and

(4) No compliance monitor.[32]

The Guidance makes clear, however, that a contractor that does not voluntarily disclose, but still cooperates and remediates, will be eligible for some mitigation credit including a DPA.[33] However, such a contractor will "rarely" qualify for an NPA.[34] Where aggravating factors exist, more stringent penalties will be imposed, but such a contractor would still be in a better position than if it did not voluntarily disclose, according to the DOJ NSD.[35]

The Guidance clearly sets out that where appropriate, and regardless of the form of resolution, disgorgement and forfeiture will be part of the final resolution framework.

Examples

To illustrate the new policy, the Guidance contains four hypothetical examples intended to illustrate possible applications of the Guidance.[36]

The first scenario involves the discovery on a ship in a U.S. port of a package containing defense articles controlled by the International Traffic in Arms Regulations (administered by DDTC) and manufactured by a U.S defense contractor destined for an embargoed country.[37]

The second describes the situation where a U.S. corporation has a foreign subsidiary. The offshore affiliate engaged in a scheme to divert critical dual-use commodities to a sanctioned nuclear entity in knowing violation of the Export Administration Regulations (administered by BIS) and U.S. export control laws, which has been alerted to senior management by a whistleblower within the company.[38]

In the third example, during a regularly conducted compliance audit, a corporation that is headquartered in Europe discovers a potential criminal conspiracy. The investigation uncovers a scheme devised by a vice president assisted by three subordinates, who also know of the illegality of their actions. One of the company's divisions had been acquiring export-controlled dual-use commodities from the United States and reexporting or transshipping them to a sanctioned country. The conduct occurred over 15 months and involved a dozen illegal shipments worth about $500,000. Senior management was unaware of these activities, although there were warning signs.[39]

The fourth scenario assumes the same facts as the third except that the violations extended over several years and numbered in the hundreds.[40]

These hypothetical examples and likely consequences described in the Guidance—ranging from a reduction in the financial penalty and a monitor or outside auditor; a period of supervision, payment of a fine, forfeiture of profits, and an NPA; an NPA and a period of supervision; to a reduced fine and period of supervision[41]—suggest that in corporate groups, differing penalties may apply to different entities, much as we have seen in the FCPA area with some cases featuring NPAs, DPAs, and pleas.[42] They also suggest that there may be a range of monitoring/supervisory options the DOJ NSD will consider, using the terms "monitor," "auditor," and "supervision" as alternates without explaining what the latter two may encompass.[43] Finally, they emphasize the need for discipline of not only those directly involved in the conduct, but also those who may have negligently failed to supervise.[44]

Implications For Contractors

The Guidance has the potential to be significant for the DOJ's export controls and economic sanctions enforcement program, for a number of reasons. We discuss two below and then, in the following section of this Paper, consider whether the Guidance indicates that export controls and economic sanctions violations will be viewed as more serious than foreign corruption in the context of comparing the two programs.

DOJ NSD More Involved In Enforcement?

Where civil regulators (DDTC, BIS, and OFAC) have traditionally taken the lead in the vast majority of investigations and enforcement actions of U.S. export control and economic sanctions laws and regulations, the Guidance suggests that more criminal investigation, and possibly enforcement, of these laws is on the horizon. Contractors evaluating what they previously might have handled as an entirely civil matter, working with the regulatory agencies, now must evaluate whether the issues involve conduct by persons who knew their conduct was not lawful and whether a voluntary disclosure to CES should be made, presumably in addition to a voluntary disclosure to the regulating agency. When coupled with the prospect of those agencies referring the matter to CES on their own accord, we believe there is the possibility that the Guidance will have the effect of bringing the DOJ NSD to the table as an investigator and enforcer where up to now it may have played a less active role, in an area where it may not have as much technical expertise as DDTC, BIS, or OFAC in administering applicable regulations. The net result will almost certainly be more criminal investigations and possibly prosecutions, or combined civil/administrative and criminal investigations and prosecutions with the respective administrative agency or agencies. How much the Guidance will incentivize self-reporting by contractors given the high standards for cooperation and the more limited benefits of penalty resolutions remains to be seen.

Further Institutionalizing The Yates Memo And A Focus On Contractors

The Guidance makes clear that it is intended to encourage contractors to voluntarily disclose willful U.S. export control and economic sanctions violations so that the DOJ NSD may bring more prosecutions against contractors themselves, and against individuals. By incentivizing voluntary self-disclosures, and requiring those disclosures to meet the *Yates* memorandum requirements of including all relevant facts about the corporate employees involved in the alleged violations, the DOJ is again requiring contractors to "name names" and make judgments about which corporate employees are culpable. The Guidance, especially coming on the heels of the FCPA Pilot Program and its effectively identical requirements, is yet another step down the path of compelling contractors to take positions adverse to their own employees in order to get mitigation credit for cooperation from the U.S. Government.

Comparison To the FCPA Pilot Program

Sophisticated consumers of cross-border regulatory and enforcement risks will immediately recognize the substantial similarities in form and substance between the DOJ NSD's Guidance and the FCPA Pilot Program: similar goals (pur-

suant to the *Yates* memorandum, increased prosecution of individual wrongdoers); almost identical definitions of voluntary disclosure, cooperation, and remediation; and a strong focus on enhancement of contractors' compliance programs as a condition of receiving the benefits offered under the two policies, but falling short of a compliance affirmative defense.

The differences between the programs, however, are important and bring into sharp relief the programs' different purposes.

First, the Guidance's goals with respect to contractors are fundamentally different. Where the FCPA Pilot Program was introduced in order to provide an avenue for companies to avoid prosecution altogether in exchange for information on individuals' misconduct, the Guidance is squarely focused on enhancing the DOJ NSD's ability to investigate and prosecute contractors as well as individuals for violations of law. As noted above, this suggests that the DOJ NSD is likely to be active in many more cases than it would have been previously.

Second, the "credit" available under the Guidance suggests that the DOJ NSD views corporate criminal violations of economic sanctions and export controls particularly seriously: whereas the FCPA Pilot Program offers a declination of prosecution in some circumstances, and/or up to a 50% reduction in the criminal fine range for self-disclosing contractors that are subject to enforcement action,[45] the Guidance is clear that an NPA is the most favorable resolution form on offer.[46] The "rogue employee" defense to corporate liability does not seem to be contemplated by the Guidance. Third, unlike the Guidance,[47] the FCPA Pilot Program has no list of "aggravating factors," further reflecting the differences between the two areas. The national security and foreign policy dimensions, and the fact that contractors are explicitly characterized as "gatekeepers" of technology in the Guidance,[48] reflects the heightened risk and responsibility profile the DOJ sees in this area.

Conclusion

By establishing an enforcement framework communicating the expectation that contractors should voluntarily disclose to criminal enforcement authorities, and by institutionalizing the *Yates* memorandum-derived pressure on contractors to implicate individuals in economic sanctions and export controls matters, the Guidance has significant implications for contractors investigating sanctions and export controls issues. It also has implications for their directors, officers, managers, and employees. Although it remains to be seen whether the announcement of the new policy framework will lead to more DOJ investigations of sanctions and export controls matters, or more voluntary disclosures, it does signal DOJ's heightened presence into yet another area traditionally viewed as more of a regulatory than a criminal domain, and further raises the criminal enforcement risks facing U.S. and other contractors doing business across borders.

Guidelines

These *Guidelines* are intended to assist you in understanding the implications for U.S. and other companies, including U.S. Government contractors, of the DOJ NSD's Guidance regarding export controls and economic sanctions violations. They are not, however, a substitute for professional representation in any specific situation.

1. Recognizing the additional scrutiny that the DOJ NSD's increased interest in criminal enforcement will engender, contractors should assess how they address export controls and sanctions issues when conducting internal investigations. Notably, contractors need to elicit or develop the necessary information about the circumstances of an apparent violation to make an informed judgment as to the implications of their disclosures to applicable regulatory authorities. In collecting such information, contractors may need to conduct more formal investigations to protect attorney-client privileged communications and attorney work product, initiate document holds, and provide warnings to employees.

2. As part of the investigation, contractors will need to assess the type of infraction at issue and how that could bears on potential adjudication by the DOJ NSD. For example, a technical infraction of a recordkeeping or reporting requirement may be viewed differently than exporting items without a license. Similarly, exporting items to a destination where a license was not granted but could have been obtained might be viewed differently than cases where the destination, end-user, or end-use for such an item was subject to a U.S. Government policy of denial. Of course, where contractors identify a pattern of behavior, potential harm or threat to U.S. national security, or wrongful intent by personnel, then such findings could change the risk calculus.

3. Any decision to voluntarily disclose to the DOJ NSD

should be carefully made, balancing the advantages and disadvantages of doing so. There will be more emphasis placed on assessing the degree of awareness by implicated personnel, such as whether the conduct exhibited willfulness, reckless disregard, or negligence or was without knowledge or reason to know. This determination also will factor into what remedial measures, if any, are warranted for culpable individuals.

4. Finally, it should be noted that DDTC, BIS, and OFAC may hold substantial licensing discretion over the international activities of U.S. Government contractors. Accordingly, concerns about potential criminal conduct by contractors and their individual personnel may have implications for the orderly adjudication of requests for approval. At the same time, this factor may or may not be the sole determining factor about whether to voluntarily disclose to the DOJ NSD.

ENDNOTES:

[1]U.S. Dep't of Justice, Nat'l Sec. Div., Guidance Regarding Voluntary Self-Disclosures, Cooperation, and Remediation in Export Control and Sanctions Investigations Involving Business Organizations (Oct. 2, 2016), available at https://www.justice.gov/nsd/file/902491/download (hereinafter DOJ NSD Guidance).

[2]The Guidance does not apply to financial institutions by virtue of their "unique reporting obligations under their applicable statutory and regulatory regimes." DOJ NSD Guidance at 2 n.3.

[3]DOJ NSD Guidance at 2.

[4]See generally Baj, Cook, Hayes, Irwin et al., "Export Control Reform: Implementation & Implications," Briefing Papers No. 14-13 (Dec. 2014); Irwin & Best, "Integrating Domestic & International Compliance: Considerations & Strategies for Government Contractors," Briefing Papers No. 13-13 (Dec. 2013).

[5]DOJ NSD Guidance at 4 & n.5.

[6]15 U.S.C.A. §§ 78m, 78dd-1, 78dd-2, 78dd-3, 78ff.

[7]Memorandum from Andrew Weismann, Chief (Fraud Section), U.S. Dep't of Justice, The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance (Apr. 5, 2015), available at https://www.justice.gov/opa/file/838386/download; see also Steptoe Client Alert, Will DOJ's FCPA Pilot Program Fly With Companies Considering Self-Disclosure? (Apr. 11, 2016), available at http://www.steptoe.com/publications-11194.html; 58 GC ¶ 130.

[8]DOJ NSD Guidance at 2.

[9]Memorandum from Sally Quillian Yates, Deputy Att'y Gen., U.S. Dep't of Justice, Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015), available at https://www.justice.gov/dag/file/769036/download; see also Steptoe Client Alert, DOJ's New Focus on Executives May Mean Fewer Corporate Settlements (Sept. 21, 2015), http://www.steptoe.com/publications-10767.html.

[10]DOJ NSD Guidance at 2–4.

[11]DOJ NSD Guidance at 8–9 & n.14.

[12]DOJ NSD Guidance at 8, 10, 11.

[13]DOJ NSD Guidance at 4.

[14]Bryan v. United States, 524 U.S. 184 (1998).

[15]Bryan v. United States, 524 U.S. 184, 193 (1998); see DOJ NSD Guidance at 4 n.5.

[16]Bryan v. United States, 524 U.S. 184, 193–98 (1998); see DOJ NSD Guidance at 4 n.5.

[17]DOJ NSD Guidance at 3.

[18]DOJ NSD Guidance at 8–9 & n.14.

[19]DOJ NSD Guidance at 5.

[20]DOJ NSD Guidance at 5 n.8.

[21]USAM § 9-28.000 et seq.

[22]DOJ NSD Guidance at 5.

[23]DOJ NSD Guidance at 5–6.

[24]DOJ NSD Guidance at 5–6.

[25]DOJ NSD Guidance at 5 & n.9.

[26]Memorandum from Andrew Weismann, Chief (Fraud Section), U.S. Dep't of Justice, The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance 5–6 (Apr. 5, 2015), available at https://www.justice.gov/opa/file/838386/download.

[27]DOJ NSD Guidance at 7.

[28]DOJ NSD Guidance at 7–8.

[29]DOJ NSD Guidance at 7.

[30]DOJ NSD Guidance at 8–9.

[31]DOJ NSD Guidance at 8.

[32]DOJ NSD Guidance at 8.

[33]DOJ NSD Guidance at 9.

[34]DOJ NSD Guidance at 9.

[35]DOJ NSD Guidance at 9.

[36]DOJ NSD Guidance at 9–11.

[37]DOJ NSD Guidance at 9; see 22 C.F.R pts.120–130.

[38]DOJ NSD Guidance at 10; see 15 C.F.R. pts 730–774.

[39]DOJ NSD Guidance at 10–11.

[40]DOJ NSD Guidance at 10–11.

[41]DOJ NSD Guidance at 10–11.

[42]DOJ NSD Guidance at 11.

[43]DOJ NSD Guidance at 10–11.

[44]DOJ NSD Guidance at 10–11.

[45]Memorandum from Andrew Weismann, Chief (Fraud Section), U.S. Dep't of Justice, The Fraud Section's Foreign Corrupt Practices Act Enforcement Plan and Guidance 8–9

(Apr. 5, 2015), available at https://www.justice.gov/opa/file/838386/download.

[46]DOJ NSD Guidance at 8, 10, 11.

[47]DOJ NSD Guidance at 8.

[48]DOJ NSD Guidance at 2.

NOTES:

NOTES:

NOTES:

BRIEFING PAPERS