

Kevin Muhlendorf Comments on DOJ-Sought Disclosures for M&A Foreign Deals

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Kevin B. Muhlendorf, partner in Wiley Rein's White Collar Defense & Government Contracts Practice, was quoted in an August 1 *Bloomberg Law* article regarding comments from a U.S. Department of Justice (DOJ) official, directed to U.S. companies in the midst of high-risk foreign deals. The official said companies that are acquiring foreign firms that may have engaged in corruption schemes should use a formal procedure seeking DOJ's opinion about whether the agency would pursue a formal Foreign Corrupt Practices Act (FCPA) investigation, according to the article.

DOJ's request that companies use it, without further assurances, is a difficult request, said Mr. Muhlendorf, who is former assistant chief in the fraud section of DOJ's criminal division.

"I think people are going to be naturally cautious in disclosing in a rapidly evolving situation, like M&A due diligence, things that could slow down the deal or require them to do more in exchange for the DOJ's approval on a deal," he told *Bloomberg Law*.

Because companies would be concerned about any potential delays from DOJ enforcers, Mr. Muhlendorf said he expects that the agency would move quickly the first time a company with an impending foreign merger seeks DOJ's opinion about possible illegal bribery.

"I think the first one that the DOJ will process will be done expeditiously to make a point," he said. "It's not a hollow promise. The DOJ will try." If companies take the DOJ up on its offer and DOJ is not timely in its response, that would truly hinder corporate cooperation, added Mr. Muhlendorf.

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“Companies will always struggle with whether to disclose,” Muhlendorf said. “The government has been better on giving guidance, but DOJ still has a lot of necessary discretion.”

The article can be found here (*subscription required*).