Cuneyt Akay (00:14):

[inaudible] welcome to the GP ABC podcast. I'm your host, Cuneyt Akay.

Cuneyt Akay (00:20):

The GT stands for Greenberg Traurig and the ABC stands for anti-bribery and corruption. In this episode, we're going to discuss the intersection between money laundering and anti-corruption, and I'm pleased to be joined by two guests. First, Kyle Freeney, Kyle is a shareholder in the GTD DC office. She's focused on white collar matters, including government investigations and enforcement with a focus on AML anti-corruption and forfeiture. She's a former money-laundering prosecutor with the DOJs money laundering and asset recovery section MLARS and main justice. And part of the DOJ is kleptocracy initiative specializing in money laundering with a foreign corruption predicate she's investigated matters involving the bank secrecy act in the FCPA as well as cross border matters and parallel investigations by multiple jurisdiction and has also served as assistant special counsel working on the investigation led by Robert Mueller into Russian efforts to interfere with 2016 presidential election. And as part of that, she led investigations into money laundering and asset forfeiture.

Cuneyt Akay (01:28):

My second guest is Michael Marinelli. Michael has been a guest on our podcast before and Michael is a shareholder in the GT Austin office and helps clients build and assess compliance programs for 30 years. The focus on anti-corruption export controls and sanctions issues. Our first topic today will be the differences and similarities between money laundering and the FCPA. Michael, can you give us a high level summary of the FCPA.

Michael Marinelli (01:56):

Sure, the FCPA has two core provisions to any bribery provision originally targeted the specific and fairly narrow type of corruption, rivalry of government officials by US companies to obtain a business benefit such as a contract favorable regulatory treatment or favorable tax treatment over the years, enforcement has expanded to capture non us companies that have some connections with us, however tenuous, but the substantive scope of the statute has not changed. The books and records. Provision is quite broad. It applies to issuers where's your companies whose securities are listed on a us exchange. It requires a books and records accurately reflect transactions and include reasonable detail. In other words, you should be able to tell from the company's books where the money came from, where it went, issuers are also required to have internal controls sufficient to among other things that only transactions authorized by management take place as a practical matter. This means that issuers need to have a functional anti-corruption compliance program. We know from the enforcement cases, this means more than just having an HD policy. It means having procedures and financial controls that implement that policy in the business on a day-to-day basis. That's the short version of the FCPA and what it covers. Kyle Can you take us through the AML universe?

Kyle Freeny, (03:39):

Thanks, Michael. So first generally, what are we talking about when we're talking about money laundering? Generally, we mean the movement of illicit presence and classically the example would be the layering of illicit proceeds through a series of transactions without any real economic basis for the purpose of concealing or securing the real resources or funds to make it look like legitimate income. Now under the U S statute, uh, money laundering extends to the movement of listed proceeds for other purposes. In addition to conceal it, uh, including just the simple spending elicit proceeds either way

though, the focus under US money laundering laws is on punch flow and the transfer of value. Now, in order to have illicit proceeds, of course, you need to have a predicate crime. And so under us law, there is a defined category of project crime that can be right to money laundering charges.

Kyle Freeny, (04:38):

These are often referred to as specified unlawful activity or SE-ways the broad category of serious crimes and typically ones that are carry out for January benefits. Now, from an question perspective, DOJ has historically been focused with respect to money laundering on predicate crime related to things like narcotics organized crime, but definitely in recent years, we've seen a much greater focus on white collar prescient as money laundering with predicates like wire fraud, uh, things like say fraud. When I was a prosecutor, I was even charged money laundering with Farrah credit. That is a foreign agent registration act. I want to answer one exception here to the requirement of the lifted proteins. And I think this is important, um, for anyone who's engaged in transnational financial activity under us law international transfer, that is the transfer into or out of the United States of clean funds. When done with the intent to promote specified unlawful activity, that category of predicate crime can also be money laundering.

Kyle Freeny, (05:48):

That's referred to as international promotion money laundering. This is always the same money laundering, very broad tool in the hands of motivated and aggressive prosecutor. Anyone could be held liable for money laundering violations, including under certain circumstances, businesses whose employees engage in money laundering within the scope of their employment. So all businesses really need to be cognizant of money laundering brands. Now overlaid on top of the money laundering statute is the bank secrecy act or the BSA, the bank secrecy after BSA is a set of any money laundering, record keeping and reporting requirements that applies to certain types of financial institutions. These requirements include know your customer requirements. They're required to report suspicious activity cause federal authorities, the requirements that they maintain, anti money laundering, compliance programs

Cuneyt Akay (06:46):

With those high-level summaries regarding the FCPA and money laundering. Kyle, can you tell us what areas of overlap exists between money laundering and anti-corruption

Kyle Freeny, (06:56):

Absolutely. So remember money laundry is primarily so not exclusively about the movement of the proceeds of predicate cry. And so an obvious area of overlap is where the predicate crime is corruption related. So what might that include under US law? That's the category of specified unlawful activity that can give rise to money. Laundering targets include certain offenses in violation of foreign law. That includes violation of non us laws related to embezzlement of public funds and bribery. So what does that mean as a practical matter? It means that transactions that move the proceeds of say bribery in violation of Korean law. When that's moved through the U S financial system that can be charged as money laundering. Interestingly enough, today the FCPA is also itself a predicate for money laundering, charges, meaning. So for example, someone who sends funds overseas to pay a bribe in violation of the FCPA can be charged with international promotion money laundering. It's okay to someone who moves FCPA, bribes proceeds, uh, into the United States.

Cuneyt Akay (08:09):

Kyle, you mentioned that the FCPA is a predicate crime for money laundering. Two things come to mind. One is, can you describe what an independent money laundering charge may look like? And then two, what are the other differences you see between money laundering? And anti-corruption

Kyle Freeny, (08:25):

Absolutely. So one significant difference in this particular context is that person can be charged with money laundering for moving illicit, bribe, proceeds, even if they didn't participate in the predicate criminal conduct. That is even if they were totally uninvolved in the underlying access options. So for example, DOJ could charge someone who helped a foreign official on the back end of a bride. For example, by helping the officials to move the bride proceeds into the United States or enjoy the bribe, proceeds up by purchasing assets in the United States. Another important difference between the FCPA and money laundering in this area, central overlap is the jurisdictional reach. As Michael mentioned, the FCPA is primarily focused on US conduct and US person. And so it is limited to domestic concerns or us persons conduct in the United States. The money laundering statutes in contrast are explicitly extraterritorial. And you can see that given the fact that or incorruption laws are predicates to us, money laundering charges.

Kyle Freeny, (09:34):

And so a company or individual does not need to violate the FCPA or risk exposure to U S criminal charges. If they are violating foreign corruption laws in order to break her jurisdiction under the money laundering statute, all you need as a transaction over $10,000, which is the case in most cases and a transaction that takes place in parts of the United States. I would note here that DOJ takes a very broad view of when a transaction takes place. In part in the US DOJ takes the position that a transaction that is processed through a US correspondent bank account when it is moved from one country to the next in US dollars is enough to trigger US jurisdiction under the money laundering statute. Now on the compliance side in comparing the FCPA and the bank secrecy act and its ANL requirements, uh, both certainly impose formal compliance requirements. And there are the differences in detail are probably too much to head into here, but one significant difference is that for institutions covered by the bank secrecy act, they need to be worried, not just about whether they are, or their agents are engaged in bribery or other forms of foreign corruption, but also whether their customers are

Cuneyt Akay (10:59):

Well. Now that we've discussed the similarities and differences between money laundering and anti-corruption, let's discuss some enforcement trends, particularly the intersection between money laundering and anti-corruption enforcement in the United States. And one trend that we're seeing is a DOJ is bringing more foreign corruption related individual actions where individuals are being charged with money laundering and usually wire fraud as well, instead of being charged with FCPA violation. Now, why are we seeing this? And there seems to be two answers. One is, is often easier to charge individuals with financial crimes such as money laundering and wire fraud than it is to charge, improve FCPA violation. And the second thing is it's also an Avenue. These financial crimes charges are also an Avenue for the us government to bring charges against individuals for whom there isn't FCPA jurisdiction. And the biggest group of those people are typically foreign official bribe recipient.

Cuneyt Akay (12:02):

And we recently had one good example of the intersection of the enforcement of money on during in the FCPA. And that is the Lawrence Hoskins case. And Mr. Hoskins was convicted of FCPA and money laundering charges. However, several months ago, his FCPA charges were overturned because the district court found that there was no FCPA jurisdiction over Mr. Hoskins, but the money laundering conviction has survived. Now, what does this case show us? One thing he may show us is that the Hoskins case raises the potential issue. The individual defendants and perhaps corporate defendants will be able to challenge the U S government on FCPA jurisdictional grounds, which of course may then reinforce the government's reliance on using money laundering, claims to charge underlying allegations of bribery. So that's one of the issues that we see as an enforcement trend in the intersection between money laundering and anti-corruption Kyle, what money laundering, forcement, and trends are you seeing?

Kyle Freeny, (13:09):

We're definitely seeing DOJ increasingly viewing corruption through the lens of money laundering. And I think we're going to continue to see that trend. Maybe it will be helpful to your listeners if I get a little bit of a perspective from my experience on the other side of things back when I worked for DOJ's money laundering section. So there I worked for something called the kleptocracy initiative, which targets high-level corruption, where that corruption affects the us financial system. And in just about every case that we handled, we, the money laundering, prosecutors work side by side with an FCPA attorney working those cases in tandem. And so I think you can see, um, from this where things are likely headed from an enforcement perspective, prosecutors are going to grab the pool, they think work best. And for the reasons we've been discussing that tool often, and more and more turns out to be the money laundering statutes, so DOJ, actually cops to this trend at the FCA conference back in December of last year, when, uh, then, uh, assistant attorney general Brian Benczkowski spoke about DOJ.

Kyle Freeny, (14:15):

His work in this year, foreign corruption has highlighted not just DOJ FCPA work, but also it's money laundering work under the kleptocracy initiative. So I think overall, we're going to see more charges, uh, under the money laundering statutes and in particular, the foreign corruption predicates. I think we're also going to see more use of international promotion money laundering to charge FCPA cases. That's like the Hoskins case that you mentioned there, Mr. Hopkins was charged both with FCPA and international promotion, money laundering and international promotion money laundering was done now to be clear, Hoskins was an individual case, but this trend, I think presents risks, not just to individuals, but also to companies who, as I mentioned under certain circumstances can be held by, carries in liable for the conduct of their employees. So we saw actually one reason example of this, where DOJ use the money laundering, uh, statues in particular, the threat of money laundering charges against a non us financial institution in order to secure a settlement and a non-prosecution agreement.

Kyle Freeny, (15:21):

It was ultimately related to a foreign corruption investigation. The underlying corporate resolution in that case was based on allegations. That relationship managers at the bank had helped customers to facilitate bride payments. And from the outside, we might say, well, that's just a few rogue employees who were alerted to helping our customers in ways that violated the company's policy, but that's not how DOJ saw it. And it ultimately cost the company tens to billions of dollars. Now I raised that example because I think it highlights and emerging risk, that financial institutions and other gatekeepers to the

economy like accountants, real estate agents in the absence of adequate internal controls on the basis of the employee and his conduct in this area.

Cuneyt Akay (16:06):

So given all of this, Kyle, are you suggesting that the FCPA is going away?

Kyle Freeny, (16:10):

No, the FCPA is not going anywhere. For example, money laundering charges against individuals are often just a precursor to FCPA corporate enforcement actions. And I expect that to continue. I'm not saying don't worry about FCPA or FCPA compliance. I think what I'm really saying is that companies that want to mitigate the risk that they end up on the wrong side of the DOJ investigation ought to be concerned about more than just the FCPA, so that when companies are speaking about their compliance programs, and this is whether they are subject to bank secrecy act, or even to the FCPA, as it's written, those companies are going to want to account for the risks posed by this new enforcement trends related to money laundering and corruption.

Cuneyt Akay (16:54):

Well, thank you, Kyle, for that discussion regarding the enforcement trends regarding money-laundering Michael and Natalie heard some of these enforcement trends in the money-laundering and FCPA space, now that we've discussed some of the similarities and differences being money laundering, and anti-corruption what compliance tips or suggestions do you have for compliance professionals dealing with these situations?

Michael Marinelli (17:18):

A few first one is paying attention to red flags and transactions, and specifically pay attention to and follow up on any movement of money in or out of the company. Uh, that is unusual that doesn't make commercial sense or business sense or as poorly documented. Doesn't really matter. Initially how you categorize that. You're probably shouldn't try to categorize it as an FCPA or a bribery issue, an AML issue. It could be all of the above or some other form of fraud or financial crime. So I think it's really important to stay on top of things that just look suspicious in involving the movement of money. Also, these kinds of transactions may indicate that the company's internal controls are not working properly. The second area that I think is important in both is third party management, the FCPA and the AML laws required due diligence on third parties that have a relation company, the nature of the due diligence is different for each regime. As Kyle noted, the BSA requires the know your customer due diligence or customers FCPA does not typically, uh, reach to customers. It focuses instead on the corruption risk represented by third parties that interact with the government for the company.

Michael Marinelli (18:57):

This could be typically sales agents, but can also be lawyers, accountants, um, distributors, which you're looking for there is are these people likely to pay a bribe? Have they already paid a bribe in other cases or been charged with it? So therefore it tends to be a deeper dive than what you would typically see in the YC context on a related note under either regime, the company should understand and have a process for understanding why the parties to a transaction are involved in that deal. If the business cannot explain who is doing what in a transaction, it may be an indication that there is a problem finally, regular and frequent testing of transactions for compliance with applicable company procedures can

provide timely insights into whether the compliance program is working. And if not, what's broken to be clear. Monitoring is not a hunt for a violation of law, nor is it an end to end comprehensive audit.

Michael Marinelli (19:57):

Instead, it's simply checking on whether the nuts and bolts of the compliance program are being executed or the required approvals being obtained or the required reports being filed as a documentation in order. It's these kinds of questions that you should be checking regularly.

Cuneyt Akay (20:14):

Thank you for those compliance suggestions, Michael, and I think there's some key takeaways from today's discussion regarding the intersection between money laundering, ManTech corruption. First, we have seen in, we expect to continue to see that the DOJ views foreign corruption through the lens of money laundering in large part, because money laundering has a broader reach is a more flexible enforcement tool than the FCPA. The second takeaway is who should be paying attention to these trends? Well, from this discussion, it's pretty clear that institutions and other gatekeepers to the U S financial system and overseas companies and their business partners who otherwise may not be subject to the FCPA, but use the U S financial system all may be subject to government enforcement in this area. And third money laundering and anti-corruption compliance should not be viewed as entirely separate obligation. Instead, companies should view any suspicious movement of money is potentially involving one or more corruption related laws, including money-laundering. I'd like to thank Kyle Freeney and Michael Marinelli for being guests on the GT ABC podcast. And thank you for listening to this episode of our podcast.

Cuneyt Akay (21:50):

[inaudible].