
D I S T R I C T A T T O R N E Y O F T H E C O U N T Y O F N E W Y O R K
I N T E R O F F I C E M E M O R A N D U M

TO: All Assistant District Attorneys

FROM: Daniel R. Alonso
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DATE: May 27, 2010

SUBJECT: Considerations in Charging Organizations

I. *Introduction*

Under the law, business entities and other organizations may be criminally liable for the acts of individuals. This memorandum outlines a framework for Assistant District Attorneys to follow in deciding whether to prosecute such entities, which are referred to in this memorandum simply as “organizations.”¹ It is the policy of the New York County District Attorney’s Office that an organization will not be shielded from criminal prosecution because of that status, nor will it be subject to harsher treatment. The issuance of these policy guidelines recognizes the need of the criminal justice system, in appropriate circumstances, to hold accountable such organizations to achieve just resolutions of criminal conduct, while recognizing the complex factors that must be considered in reaching such results. In any situation warranting the consideration of criminal charges against an organization, just as the Office must consider whether any responsible individual should be prosecuted, it should consider whether any responsible organization should be prosecuted.

II. *Applicability and Prior Approval*

This policy applies in all cases where there is reasonable cause to believe that an organization could be criminally liable and subject to prosecution. In such cases, Assistant District Attorneys must consider whether prosecution is warranted under the factors outlined in this memorandum. Prosecution of any organization must be approved in advance and in writing by the relevant Bureau Chief and Division Chief, except in the case of the following types of organizations (“Type I Organizations”), the prosecution of which must also be approved by the District Attorney or Chief Assistant District Attorney:

1. Financial institutions, including but not limited to banks, insurance companies, hedge funds, and private equity funds;

¹ This memorandum provides only internal guidance within the New York County District Attorney’s Office. It is not intended to, and does not, create any rights, substantive or procedural, in favor of any person, organization, or party; and it may not be relied upon in any matter or proceeding, civil or criminal. Nor does it place any limitations on the lawful prosecutorial prerogatives of the District Attorney and his staff.

2. Any publicly traded corporations;
3. Personal service organizations, including law firms and accounting firms;
4. Labor unions;
5. Political parties; and
6. State or local governments or their subdivisions.

In certain circumstances, it may be appropriate to enter into a deferred prosecution agreement (“DPA”) or non-prosecution agreement (“NPA”) with an organization. In such circumstances, the decision to enter into such an agreement, and the substance and terms of the agreement itself, must be approved by the Bureau Chief, the Division Chief, and by the District Attorney or Chief Assistant District Attorney.²

This policy does not apply, and therefore prior approval is not required, in cases where the facts and circumstances of a case do not rise to the level of reasonable cause to believe that the organization could be criminally liable and subject to prosecution.³ Additionally, prior approval to prosecute an organization is not required where an organization is essentially the alter ego of an individual, such as in the case of a professional corporation (“PC”), single-member limited liability company (“LLC”), or very small family-owned business. In such situations, there are sound reasons to treat such organizations in the same manner as the individual who controls it and commits crimes through it.

Finally, a decision *not* to prosecute an organization in a situation in which there is reasonable cause to believe the organization could be criminally liable may ordinarily be approved by the relevant Bureau Chief, except in the case of Type I Organizations, in which case the decision not to prosecute must also be approved by the Division Chief.

² It is important that the Office maintain flexibility appropriate to the unique circumstances of each individual matter. For that reason, this memorandum does not seek to impose a “one-size-fits-all” approach to all of the various terms and conditions that might be present in DPAs or NPAs. Thus, in matters where both sides agree that a DPA or NPA is appropriate, key provisions such as the contours of any accusatory instrument that might be filed, the length of time the organization will be bound by the agreement, any monetary consequences, remedial measures including the imposition of a monitor, and whether and the extent to which the organization will admit wrongdoing in the agreement, are all terms that will be subject to negotiation based on the unique facts of any given case.

³ Reasonable cause is often not apparent at the outset of an investigation, which is when an organization’s fulfillment of many of the factors below is at its most relevant. Although the Office’s application of these factors is not *required* unless at the time of the charging decision there is reasonable cause to believe the organization is criminally liable, at the time of such decision it will usually be too late to address the factors in a meaningful way, particularly with respect to cooperation and remedial efforts. Organizations should be cognizant of this possibility and consider the factors as early as practicable.

III. *Criminal Liability of Organizations*

For purposes of criminal prosecutions under the Penal Law, a “person” is defined as “a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.” Penal Law §10.00(7).⁴ Additionally, Penal Law §20.20 provides a standard for the criminal liability of corporations for the conduct of their agents.⁵ Although the Penal Law criminal liability provisions have not been specifically updated to include newer business combinations such as LLCs and limited liability partnerships, because such combinations fall under the definitional framework of Penal Law §10.00(7), courts have upheld their prosecution.⁶

⁴ Other titles of New York’s consolidated laws will define “person” differently. Because it is a definition of general applicability to all statutes absent a different meaning required by context or other more specific provisions of law, General Construction Law §37 is noted here. Under that provision, “[t]he term person includes a corporation and a joint-stock association. When used to designate a party whose property may be the subject of any offense, the term person also includes the state, or any other state, government or country which may lawfully own property in the state.”

⁵ Penal Law §20.20 Criminal liability of corporations

1. As used in this section:

(a) "Agent" means any director, officer or employee of a corporation, or any other person who is authorized to act in behalf of the corporation.

(b) "High managerial agent" means an officer of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

2. A corporation is guilty of an offense when:

(a) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations by law; or

(b) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation; or

(c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation, (ii) one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation, or (iii) any offense set forth in title twenty-seven of article seventy-one of the environmental conservation law.

⁶ For example, courts have upheld prosecutions of LLCs, *People v. Highgate LTC Management, LLC*, 69 A.D.3d 185, 187-189 (3rd Dept. 2009); partnerships, *People v. Lessoff & Berger*, 159 Misc.2d 1096, 1097-1098 (Sup. Ct., Kings. Co. 1994); *People v. Smithtown General Hospital*, 92 Misc.2d 144, 147-148 (Sup. Ct., N.Y. Co. 1977); and unincorporated labor unions, *People v. Newspaper and Mail Deliverers’ Union*, 250 A.D.2d, 207, 212-214 (1st Dept. 1998); and have looked to the conduct of the principals of such organizations in finding criminal liability. Additionally, the Court of Appeals recently ruled that the definition of “person” for purposes of New York’s “hate crimes” statute included the congregation of a synagogue, in that the congregation constituted “an unincorporated association” under the definition of “person” in §10.00(7) of the Penal Law. *People v. Assi*, 14 N.Y.3d 335 (2010). Finally, Penal Law §175.00(1) defines an “enterprise” as “any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political, or governmental activity.”

The decision whether to charge an organization involves many of the same considerations that apply to individuals. Charging an organization with criminal conduct can send a powerful message to wrongdoers and serve a substantial salutary purpose, not only by punishing particular wrongdoing, but also by promoting deterrence and remedial change within corporate culture in particular industries and beyond. But charging an organization with a crime may also bring with it substantial collateral consequences that could have a serious detrimental impact on innocent employees and shareholders. For that reason, in fashioning an appropriate disposition for an organization, ADAs must, as described more fully below, weigh such collateral consequences against the other factors such as the scope and pervasiveness of the offense.

IV. *Considerations in Charging Organizations*

No law or regulation requires the District Attorney to file charges in all cases in which the evidence supports it. Indeed, it is a hallmark of the prosecutorial function and of the long history of this Office that we exercise discretion in deciding which cases to file and which to decline to prosecute. The decision whether to prosecute an organization is no different. Set forth in this section are the general factors that commonly guide our charging decisions. Because the federal government has promulgated policies in this area for more than a decade, it is useful to examine federal policies, and then turn to the factors that will inform our charging decisions.

A. Federal Considerations

The United States Department of Justice (“DOJ”) has promulgated the Principles of Federal Prosecution of Business Organizations (the “federal principles”), which articulate factors pertinent to charging business organizations. Much public and judicial attention has been given to these efforts, and the federal principles, memorialized in the United States Attorneys’ Manual, have been informally consulted by our prosecutors for some time.⁷

⁷ With the exception of a few significant areas, the primary one being what is expected of an organization’s cooperation, the federal principles remain substantially the same as when they were first released by then Deputy Attorney General Eric Holder as guidance in 1999 through what has become known as the “Holder Memorandum.” The Holder Memorandum specifically treated an organization’s willingness to waive attorney-client privilege and work product protection as relevant to its cooperation. In addition, the Holder Memorandum did not specifically list as a consideration “the adequacy of the prosecution of individuals responsible for the corporation’s malfeasance.” Also, the “collateral consequences” language in the current standards includes language additional to that used in the Holder Memorandum. In 2003, what has become known as the “Thompson Memorandum” was issued by DOJ which expanded on the Holder Memorandum and required application of the policy in deciding whether to prosecute an organization. Under the Thompson Memorandum, an organization’s cooperation and compliance programs would be carefully scrutinized. As stated by then Deputy Attorney General Larry D. Thompson in the memorandum, “The main focus of the revisions is increased emphasis on and scrutiny of the authenticity of a corporation’s cooperation.” A particularly sensitive issue was whether an organization’s willingness to waive the attorney-client privilege and work product protection should be considered under the rubric of cooperation. In 2006, through what is known as the McNulty Memorandum, DOJ modified, but did not eliminate, a federal prosecutor’s authority to demand or seek such privilege waivers as a factor of cooperation. DOJ’s latest word on the subject, issued in August 2008 by Deputy Attorney General Mark Filip, barred federal prosecutors from seeking privilege waivers from organizations.

The federal principles set forth certain factors to be considered in prosecuting organizations, and also caution federal prosecutors against considering certain other factors. Ultimately, they serve as a guide to assist federal prosecutors in reaching the final decision as to whether a corporation should be prosecuted.⁸ In general, such criteria parallel what federal prosecutors are required to consider in bringing criminal charges against individuals, which include “the sufficiency of the evidence; the likelihood of success at trial; the probable deterrent, rehabilitative, and other consequences of conviction; and the adequacy of noncriminal approaches.” U.S. Attorneys’ Manual, Title 9, Chapter 9-28.300. In addition to those general considerations, DOJ has pointed to other considerations relevant to what is referred to in the United States Attorneys’ Manual as a “corporate target,”⁹ though such considerations are not intended to be exhaustive. These criteria, set forth in 9-28.300 (A) of the U.S. Attorneys’ Manual, include:

1. the nature and seriousness of the offense, including the risk of harm to the public, and applicable policies and priorities, if any, governing the prosecution of corporations for particular categories of crime;
2. the pervasiveness of wrongdoing within the corporation, including the complicity in, or the condoning of, the wrongdoing by corporate management;

Under their current iteration, the federal principles also disallow DOJ prosecutors from considering as a factor of cooperation whether an organization advances attorneys’ fees to its employees, whether an organization has entered into a joint defense agreement, and whether an organization has retained or sanctioned any particular person. The federal principles do note that an organization’s disclosure of sensitive governmental information to other members of a joint defense agreement could be relevant to the cooperation factor. And, the federal principles also note that how and whether an organization disciplines a culpable employee could be relevant to the consideration of its remedial measures and compliance program.

Issues regarding how DOJ prosecutors had evaluated the advancement of legal fees by an organization to its employees became critical to the Second Circuit’s decision in *United States v. Stein*, 541 F.3d 130 (2d Cir. 2008), in which it upheld dismissals of prosecutions of corporate employees where federal prosecutors’ statements regarding the propriety of the corporation advancing attorneys’ fees to employees were found to have impinged on the employees’ Sixth Amendment right to counsel. See section IV(B)(a) below for a discussion of the Office’s approach to advancement of fees and waiver of attorney-client privilege and work product protection.

⁸ The current federal principles use the word “corporations” but note that they are “intended to be applicable to the consideration of the prosecution of all types of business organizations, including partnerships, sole proprietorships, government entities, and unincorporated associations.” U.S. Attorneys’ Manual 9-28.000, *Principles of Federal Prosecution of Business Organizations*, n. 1.

⁹ This Office has traditionally resisted applying the labels “target” or “subject” to persons investigated. Although the terms are sometimes informally used, they can confuse the issues in an investigation, particularly in the context of potential organizational criminal conduct. Generally, what is known to the prosecutor is that suspicious or unusual conduct has occurred that has the earmarks of possible criminality. An investigation seeks evidence and gathers facts about conduct. Although certain initial judgments can often be made, it often is not clear who might be subject to criminal liability until well into an investigation.

3. the corporation's history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it;
4. the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents;
5. the existence and effectiveness of the corporation's pre-existing compliance program;
6. the corporation's remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, to pay restitution, and to cooperate with the relevant government agencies;
7. collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution;
8. the adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and
9. the adequacy of remedies such as civil or regulatory enforcement actions.

In connection with each of these non-exhaustive factors, the United States Attorneys' Manual provides further detail and discussion. The DOJ criteria by their nature require a balancing approach that relies upon discretion, common sense, and judgment, and not the application of mechanical standards. The Office's considerations, discussed in the next section, are similarly flexible.

B. New York County Considerations

Our policy on charging decisions relating to organizations is distilled from the expectations of New York law, the unique experiences of this Office, and the efforts of DOJ. The following factors should be considered in making the decision whether to bring criminal charges against an organization, although any list of factors is not intended to be exhaustive. Moreover, at times some factors, even one factor, may so strongly militate towards a decision to charge or not that it will have dominance.

(a) the organization's timely and voluntary disclosure of wrongdoing and the extent of cooperation by the organization in the investigation;

Comment: This factor, drawn in part from 9-28.300(A)(4) of the United States Attorneys' Manual (see also U.S. Attorneys' Manual, Title 9, Chapter 9-28.700), considers both the organization's willingness to self-report at a time when the organization did not believe itself to be under investigation, as well as to cooperate in the criminal investigation (however initiated) and any related prosecutions. Such consideration includes an evaluation of the extent and value of that cooperation. It bears substantial emphasis that the Office does not consider the organization's mere

compliance with the requirements of the law, including the grand jury process, to be cooperation. Rather, such compliance is no more or less than what the law requires of all legal persons, and anything short of abiding with those requirements could expose the organization to contempt proceedings or other legal sanctions. In particular, representations by the organization that it will cooperate or public statements that it is “cooperating fully” are not evidence that the organization is in fact fulfilling this consideration.

Instead, this factor looks at what the organization voluntarily does, beyond what it is required to do, to advance or try to advance a criminal investigation being undertaken by the Office. Examples of cooperation include conducting an internal investigation and presenting or providing the facts learned from that investigation or otherwise known to the organization to the Office, making employees or agents of the organization available for investigative interviews, conducting and sharing forensic analyses of electronic media, providing documents and evidence voluntarily and without resort to legal process, and – with the exception of attorney-client privilege and work product protection, described below – voluntarily waiving legal entitlements the organization would otherwise have.

Voluntary efforts such as these are strong evidence of an organization’s *bona fide* interest in demonstrating good corporate citizenship and will be considered as a reason to forego prosecution. On the other hand, an organization’s efforts to obstruct, delay, or inhibit an investigation will also be considered. Thus, although the Office will not ordinarily request that an organization waive valid claims of attorney-client privilege or work product protection in order to be credited for its cooperation,¹⁰ where an organization relies on the attorney-client privilege or the work product doctrine to obstruct the investigation, or when it refuses to disclose relevant facts that will further the investigation, these factors will militate against cooperation credit. Similarly, although the Office will not ordinarily be influenced by an organization’s decision to provide for the legal expenses of its directors, officers, employees, or agents, or its decision to enter into an appropriate joint defense agreement, if such practices are made as part of an effort to obstruct, in any way, an investigation or prosecution, or if they result in relevant information’s becoming unavailable to the investigation, they will be considered in any decision whether to prosecute the organization.

Nothing in this section prohibits an organization from voluntarily choosing to waive applicable privileges, as often happens when an organization self-reports wrongdoing by an employee or by agents of the organization. Further, in compelling circumstances delineated in a written memorandum, followed by the written approval of the District Attorney or the Chief Assistant District Attorney, Assistant District Attorneys may request a waiver of attorney-client

¹⁰ Two exceptions apply to the Office’s general policy not to request that an organization waive a valid claim of attorney-client privilege or work product protection. First, where the organization is asserting, to any degree, an argument that its actions at the time of the transactions under investigation were based on the advice of its counsel, the Office cannot be expected to test the veracity of such a claim without access to such contemporaneous communications. Second, where a full recitation of the relevant facts as part of an organization’s cooperation is not possible without resort to the results of an internal investigation, the organization may choose either to provide the facts in a way that does not waive privilege, or waive its privilege as to that part of its internal investigation. In the latter case, if the organization provides all of the relevant facts in its possession that are necessary to further the investigation, no waiver of attorney-client privilege may be requested without the approvals specified at the end of this Comment.

privilege or work product protection from an organization as a condition of cooperation.

(b) the seriousness and circumstances of the offense, including the extent of the harm caused or intended by the offense, both privately and to the public;

Comment: This factor, drawn from CPL §210.40(1)(a) and (b) (the section dealing with dismissals in the interest of justice) overlaps with 9-28.300(A)(1) of the United States Attorneys' Manual (see also U.S. Attorneys' Manual, Title 9, Chapter 9-28.400). As with most factors, this one involves a continuum of conduct. On one side of the continuum is conduct that is technically criminal, but which has had little impact. On the other side is conduct that was intentionally committed to benefit the interests of the organization without regard for, or with the intention of endangering or harming, the public or persons outside of the organization. This factor also considers not just the harm, if any, that was caused or intended by the criminal conduct, but the harm that reasonably would have resulted had the conduct been allowed to continue.

(c) the pervasiveness of wrongdoing within the organization, including the complicity in, or the condoning of, the wrongdoing by management;

Comment: This factor, drawn from 9-28.300(A)(2) of the United States Attorneys' Manual (see also U.S. Attorneys' Manual, Title 9, Chapter 9-28.500) considers the extent to which officers, employees, and agents of the organization were involved in the criminal conduct and to what extent it was pervasive throughout the organization. On one side of the continuum are isolated events in which there was limited participation and knowledge by only a few persons within the organization. On the other side is criminal conduct that was part of the corporate culture of the organization, sponsored and encouraged by management and typically engaged in by a large percentage of employees.

(d) the history of misconduct by or within the organization, including prior criminal, civil, and regulatory enforcement actions against it or its principals;

Comment: This factor is drawn from CPL §210.40(1)(d) and from 9-28.300(A)(3) of the United States Attorneys' Manual (see also U.S. Attorneys' Manual, Title 9, Chapter 9-28.600). Although the DOJ factor is drafted in terms of "similar misconduct," it is relevant to consider the entire prior history of the organization, not just in terms of similar misconduct, but any other misconduct. In a situation where an organization has been unable to address the weaknesses leading to recurrent misconduct, but where there is substantial reason to believe that the organization may be able to redeem itself, tools such as DPAs with specific and express conditions for future behavior should be considered.

(e) the impact of prosecuting or not prosecuting on the public's confidence in the fairness and evenhandedness of the criminal justice system;

Comment: This factor, drawn from CPL §210.40(1)(g), addresses the impact of not bringing criminal charges, where otherwise warranted, on the public's confidence in the evenhanded application of prosecutorial discretion. This factor has no direct analogue in the DOJ factors, and recognizes the importance in New York that the criminal justice system be perceived as fair.

(f) the organization's previous efforts to address corruptive influences by means of compliance programs and the organization's remedial actions to address the present misconduct through (i) the implementation or improvements in its compliance programs, (ii) the discipline, termination, and replacement of wrongdoers, (iii) the payment of restitution, and (iv) cooperation with relevant regulatory agencies;

Comment: This factor, drawn in part from 9-28.300(A)(5) and (6) of the United States Attorneys' Manual (see also U.S. Attorneys' Manual, Title 9, Chapter 9-28.800 and 9-28.900), considers, where pertinent, both the extent to which the organization had in place compliance programs that sought to discourage, prevent, and detect the criminal conduct that took place, as well as the extent to which the organization has reacted to the misconduct through remedial efforts to strengthen its compliance programs, sanction the individual wrongdoers, compensate those harmed by its wrongdoing, and cooperate with governmental agencies other than law enforcement in addressing the conduct underlying the criminal investigation. An organization that has in the past taken problem areas seriously and has tried to address them, and which proactively addresses the current misconduct, will receive credit under this factor.

Although this factor properly considers the discipline, termination, and replacement of wrongdoers as a factor to assess an organization's remedial actions, the Office has no place in directing or suggesting particular employment actions with respect to specified individuals, and ADAs are directed not to do so.

(g) the impact, harm, and collateral consequences of prosecuting the organization to innocent persons who are or were part of the organization, such as shareholders, pension holders, employees, and others not personally culpable, as well as the impact on the public arising from prosecuting the organization;

Comment: This factor, influenced by CPL §210.40(1)(h) and 9-28.300(A)(7) of the United States Attorneys' Manual (see also U.S. Attorneys' Manual, Title 9, Chapter 9-28.1000), considers the collateral consequences of bringing criminal charges against an organization. The conviction of an organization and, often, the mere fact of filing charges, can have a significant impact on the organization's future. In some instances, the prosecution alone may be fatal to the continued existence of the organization. Sensitivity must be given to whether the prosecution will create harm to others disproportionate to the harm involved in the underlying misconduct.

(h) the attitude and views of the victims of the misconduct;

Comment: This factor, influenced by CPL §210.40(1)(i), considers the views, if reasonably determinable, of those harmed by the organization's criminal conduct. Although the decision to prosecute a misdemeanor or to seek indictment for a felony is a decision reserved to the prosecutor alone, the views of victims can be helpful in reaching a decision. Analogously, New York law recognizes that a victim's viewpoint may have significance in a judge's sentencing decision after a conviction. *See* CPL §380.50. Thus, Assistants should make reasonable efforts to ascertain the views of victims where feasible before making the charging decision.

(i) the adequacy and feasibility of the prosecution of individuals responsible for the organization's malfeasance;

Comment: This factor, drawn mostly from 9-28.300(A)(8) of the United States Attorneys' Manual, considers whether prosecuting individuals alone will adequately address the misconduct. It differs from the DOJ factor in that it adds the phrase "and feasibility" to what is considered. As stated at the outset, the acts of individuals result in organizational liability, and it may be that prosecuting such individuals for their conduct adequately addresses the misconduct. There are times when the prosecution of individuals alone would be adequate to address the organizational malfeasance, but such prosecution is not feasible for evidentiary, legal, physical, practical, or other reasons. In that situation, this factor requires the consideration of whether the misconduct should go unpunished even if prosecution of individuals might have otherwise been adequate to address the organizational malfeasance.

(j) the sufficiency of remedies such as civil or regulatory enforcement actions in addressing the organizational malfeasance;

Comment: This factor, drawn from 9-28.300(A)(9) of the United States Attorneys' Manual (see also U.S. Attorneys' Manual, Title 9, Chapter 9-28.1100), considers whether the organization's misconduct would be sufficiently addressed by non-criminal proceedings, either through civil lawsuits or by regulatory actions. Bringing a criminal prosecution requires the allocation of prosecutorial resources which are not, by their nature, unlimited. Likewise, the resources of the criminal justice system as a whole are not unlimited. There can be a significant price tag to mounting criminal prosecutions of complex and sophisticated kinds of organizational misconduct. In some situations, even if a criminal prosecution is warranted against an organization, the misconduct that occurred could be adequately addressed either by civil remedies or, if the organization is under the umbrella of a governmental regulatory scheme, by the non-criminal governmental enforcement agencies tasked with the organization's regulation. Nothing in this section prohibits filing charges against an organization that is also subject to an enforcement action, regulatory lawsuit, private lawsuit, or administrative proceeding.

V. *Conclusion*

As with all decisions that our prosecutors make every day, the decision as to whether to charge an organization should be made in the best interests of the public and without fear or favor. Such analysis requires special consideration of the collateral implications of a decision to charge, and therefore require the additional scrutiny set forth in this memorandum. Bearing that in mind, Assistant District Attorneys are encouraged to seek dispositions that hold organizational malefactors accountable for their actions, while at all times bearing in mind our obligation to reach fair and just resolutions.