

### U.S. Securities Regulation

**Cantwell:** Mary Jo, until the start of this year, you served as Chair of the U.S. Securities and Exchange Commission (“SEC”). Your tenure of nearly four years was one of the longest in history. During this time, what was your impression of the international influence of regulators around the world?

**White:** As Chair of the SEC, I had to work closely with securities regulators from many different countries on numerous occasions. Since the financial crises around ten years ago, securities and other financial regulators across the globe have been cooperating more closely via the FSB (Financial Stability Board) to address various issues in order to promote economic stability.

**Cantwell:** In the United States we are certainly seeing an increasing number of investigations into alleged offenses abroad.

**White:** Yes, and to support this, the cooperation of regulatory agencies worldwide is indispensable; as long as enforcement activity increases abroad, the importance of the role of international cooperation will increase as well. This international cooperation is largely made possible through MMoUs entered into by IOSCO (International Organization of Securities Commissions) member countries.

### U.S. Regulatory Enforcement: What You Need to Know

**Borut:** What aspects of the U.S. securities regulatory system should Japanese companies particularly be aware of?

**White:** The first point to note is that the United States has a very well established whistleblower protection system. The Dodd-Frank Act established a system by which informants are offered a cash reward for information that leads to the exposure of wrongdoing. This rule could also be applied to the employees of Japanese companies. The law also provides protections against retaliation for whistleblowers, although those protections may not apply to employees based outside of the United States.

**Cantwell:** Another point to note with regard to the U.S. securities regulatory system is that a parent company may be held responsible for wrongdoing by its subsidiary, where that subsidiary is regulated by U.S. securities laws. Trading companies and other Japanese companies that invest in a wide range of businesses, with many subsidiaries involved in various industries and located in many different countries, should particularly take note as this is a potential area for major legal risk. Such risks may be particularly

significant where there is inadequate or insufficient reporting from subsidiaries.

### Preventative Measures

**Aoyama:** What can Japanese companies do to stay ahead of the regulatory curve?

**White:** One key is to have compliance personnel who are actively monitoring business activities for compliance with U.S. regulatory laws throughout the company, including at the subsidiary level. U.S. regulators increasingly require corporations to integrate their compliance and business functions.

**Cantwell:** It is not business first and then compliance; companies are required to have a system in place whereby compliance and business functions work together seamlessly, with compliance monitoring occurring in parallel with business activities.

**White:** Exactly. To achieve this, companies must maintain a strong compliance department, keep employees aware of the compliance department’s activities, and set the tone that the compliance team employees are indispensable and consulting with them on business matters is a must.

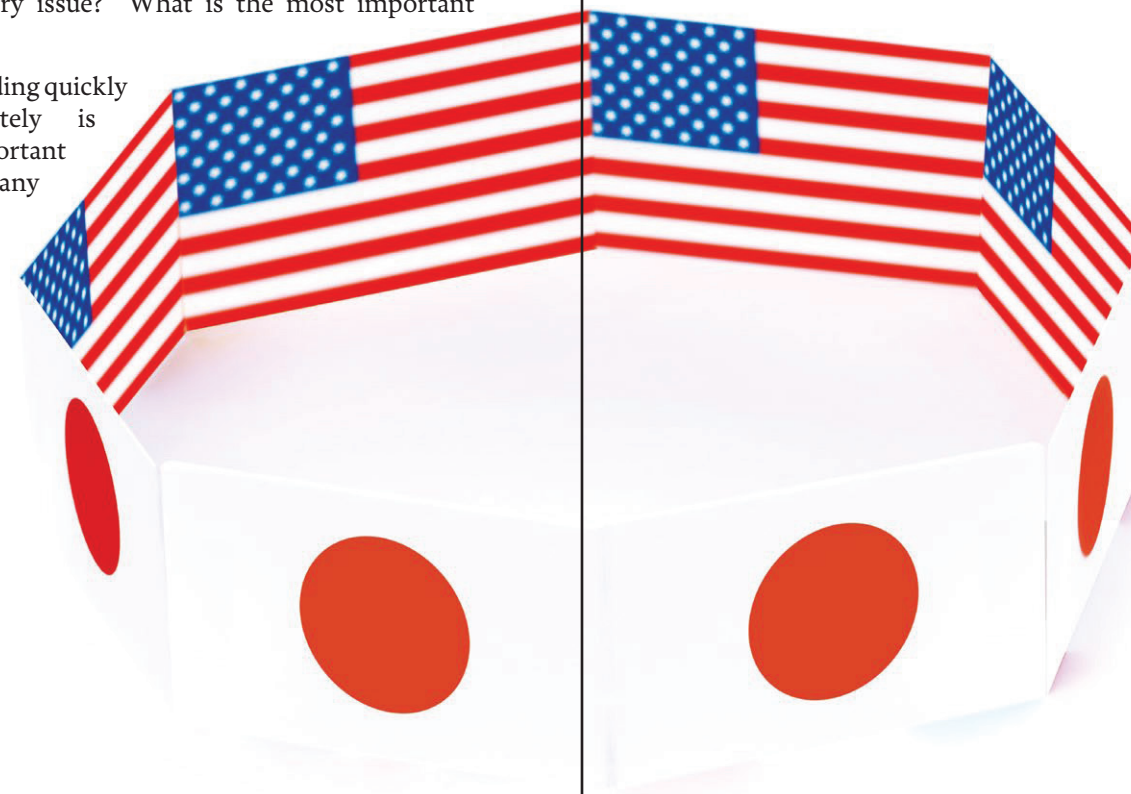
### Responding to a Crisis

**Borut:** What should a company do if faced with a potentially serious regulatory issue? What is the most important thing it can do?

**White:** Responding quickly and appropriately is the most important thing a company



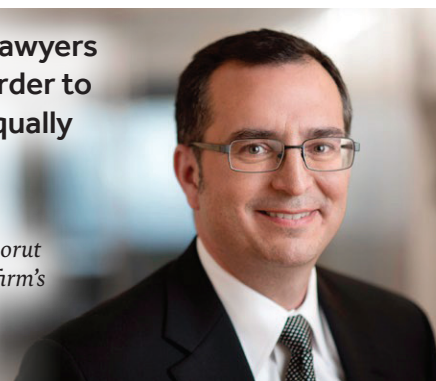
# Trends in U.S. Regulatory Enforcement and Their Impact on Japanese Companies



# Debevoise & Plimpton

**“We form crisis response teams by matching experienced lawyers to the particulars and geography of the matter at hand in order to craft a quick and appropriate response – a service that is equally useful to Japanese companies.” – Ezra Borut**

**Ezra Borut**, Gaikokuho Jimu Bengoshi, Admitted to Practice in New York. Mr. Borut focuses his corporate practice on M&A and joint ventures. Mr. Borut has spent much time in Japan throughout his career and has resided in the firm’s Tokyo office since August 2016.



### Focus on Japanese Companies

**Aoyama:** Are there any crisis scenarios that Japanese companies should be particularly concerned about?

**White:** For Japanese companies subject to U.S. law, the most typical example is the discovery of a potential violation of the Foreign Corrupt Practices Act (“FCPA”). That’s not to say that the FCPA is the only U.S. law that Japanese companies need to be worried about, but it has been an area of consistently rigorous enforcement by U.S. regulators.

**Cantwell:** As for how to prevent the prototypical FCPA violation scenario, the most effective approach is to build a strong compliance program, as we previously discussed. Legal and compliance teams should be attuned to U.S. regulatory risks. American law firms can assist in this regard.

**Borut:** When your client is a Japanese company, is there anything you pay particularly close attention to?

**White:** We understand that the business practices and the processes for reaching internal consensus at Japanese companies are different from those at European and U.S. companies. Also, we note how differences in culture and custom can affect how problems are approached. Keeping

these things in mind, we strive to deepen our clients understanding of effective interaction with European and U.S. regulatory authorities and negotiation tactics.

**Aoyama:** To assist with this, Japanese and foreign-qualified lawyers in the Debevoise Tokyo office are often added to the team for matters with a Japan connection.

**Cantwell:** It is a benefit that we can also leverage the experience of the many other American and European lawyers across the Debevoise offices who have spent significant time in Japan. Even other lawyers, myself included, regularly travel to Japan so that we can have more opportunities to meet directly with clients.

**Borut:** It is a pleasure to be able to meet frequently with our colleagues from various other Debevoise offices, including New York, London, Hong Kong and others, from the vantage point of the Tokyo office. This ability to maintain close communications across offices is directly linked to our ability to provide superior client service.

**White:** Our relationship with Japanese law firms is also important. As we work on many international matters, cooperation with Japanese lawyers is indispensable. Debevoise has been able to develop deep relationships with various lawyers at multiple law firms. We anticipate – and look forward! – to continuing to build these relationships.

**“On matters involving Japan that require effective problem-solving and negotiation in response to European and U.S. regulatory action, Japanese and foreign qualified lawyers in our Tokyo office often join the team.” – Naomi Aoyama**

**Naomi Aoyama**, Bengoshi, Admitted to Practice in New York. Ms. Aoyama graduated from the law faculty of University of Tokyo in 1991 and became a lawyer in 1994. She received her LLM from University of Chicago Law School in 1999. From 1999-2015 she practiced in the New York office of Debevoise & Plimpton LLP handling M&A and joint venture matters. She returned to Japan to found the Tokyo office.



**“Regulators are looking for companies to have a system in place that allows them to achieve compliance while carrying out business activities.” – Mary Jo White**

**Mary Jo White**, Admitted to Practice in New York (former Chair of the SEC). Ms. White served as Chair of the SEC from April 2013 to January 2017. She served as U.S. Attorney for the Southern District of New York from 1999-2003 where she handled securities and finance related matters as well as the 1993 World Trade Center bombing. Following Ms. White’s entry into the firm in 1976 and amidst her prosecutorial and other governmental experience, Ms. White has served as a partner at Debevoise from 1983-1990, from 2002-2013 and from early 2017.



can do. To be able to do this, it is often recommended that companies consult outside specialists.

**Aoyama:** Debevoise and Plimpton recently launched a Strategic Crisis Response and Solutions Group.

**White:** Yes! The Strategic Crisis Response and Solutions Group spans across Debevoise offices in Europe, America and Asia and focuses specifically on assisting clients in responding to crisis situations. The team includes not only lawyers with great experience working in the field to assist clients but also lawyers who previously served as regulatory authorities, like me, and former judges. The group is divided into six teams: the (1) Financial and Securities Crisis Team; (2) Corporate Investigations and International Corruption Crisis Team; (3) Parallel Civil Litigation Crisis Team; (4) Cybersecurity & Privacy Incidents Crisis team; (5) Sensitive and Personal Allegations Crisis Team; and (6) Monitorships. From these teams, we can create a customized rapid response group by matching the geography and particularized nature of the matter with lawyers’ expertise. This ability to create specialized teams from across regions and disciplines quickly is extremely useful when responding to a crisis.

**Borut:** I think that kind of legal service could be useful to Japanese companies in a wide variety of situations, whether it is facing a compliance matter in Latin America, or a European subsidiary involved in a human rights matter in Africa.

**Cantwell:** Our team is able to help clients in such situations to effectively avert legal and reputational harm.



**“Legal and compliance departments should pay close attention to changes in law and regulatory enforcement trends – it is essential to stay up to date on the latest information.” – Helen Cantwell**

**Helen Cantwell**, Admitted to Practice in New York. Ms. Cantwell’s practice primary focuses on crisis management, internal corruption and investigations, white collar criminal defense and commercial litigation. Prior to joining Debevoise, Ms. Cantwell worked at the U.S. Attorney’s Office. Ms. Cantwell graduated from Harvard Law School.

