



White Collar, Government & Internal Investigations ADVISORY ■

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In Like a Lion: DOJ Enters March with a Flurry of Corporate Criminal Enforcement Activity

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Recent days have brought a dizzying number of announcements from the U.S. Department of Justice (DOJ) in the corporate criminal enforcement space. From new enforcement initiatives related to corporate compensation structures and employee personal device and messaging application use to DOJ-wide standardization of incentives for companies to voluntarily self-report misconduct, the DOJ is signaling an ongoing and increasing focus on corporate criminal wrongdoing.

Highlights of this burst of DOJ activity include:

- **A standardized voluntary self-disclosure policy for U.S. Attorneys' Offices**

Modeled on – but not identical to – the Corporate Enforcement Policy pioneered by the DOJ's Criminal Fraud Section, this policy ensures that across the nation's 93 U.S. Attorneys' Offices, companies will encounter a more consistent and predictable approach to corporate enforcement, including specified benefits for companies that (1) voluntarily self-disclose criminal conduct; (2) fully cooperate with the U.S. Attorney's Office investigation of that conduct; and (3) timely and appropriately remediate the criminal conduct.

- **An emphasis on personal device and third-party messaging application policies**

In a long-promised update to the DOJ Criminal Division's Evaluation of Corporate Compliance Programs guidance, Criminal Division prosecutors are now required as part of their consideration of companies' compliance programs to examine companies' "policies and procedures governing the use of personal devices, communications platforms, and messaging applications, including ephemeral messaging applications," seeking to determine whether such policies and procedures are appropriately risk-tailored and allow for appropriate preservation of business records. This further aligns the DOJ [with other enforcement agencies](#) closely scrutinizing such policies and procedures.

- **A two-part focus on "compliance-promoting" corporate compensation programs**

In a two-pronged effort, the DOJ has taken steps to operationalize its focus on the extent to which compensation programs incentivize compliance. First, the DOJ's Criminal Division made significant revisions to relevant portions of its Evaluation of Corporate Compliance Programs guidance in order to require prosecutors to consider whether

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companies have designed their compensation structures in a way that enables them to (among other things) “recoup[] compensation that has been paid, where there has been misconduct.” Second, the DOJ’s Criminal Division has begun a three-year Pilot Program Regarding Compensation Incentives and Clawbacks that (1) requires as part of every Criminal Division corporate enforcement action that the company “implement criteria related to compliance in its compensation and bonus system” and report annually to the DOJ about that implementation; and (2) makes fine reductions available to companies that claw back or attempt to claw back compensation paid to culpable employees and knowledgeable (or willfully blind) supervisors.

- **Additional focus on “the intersection of corporate crime and national security”**

Building on a theme sounded by senior DOJ officials in prior public statements, the DOJ has announced the addition of more than 25 new prosecutors to the DOJ’s National Security Division who will focus on “sanctions evasion, export control violations and similar economic crimes” and will include the Division’s “first-ever Chief Counsel for Corporate Enforcement.” A less specific resource surge – described only as a “substantial investment” – was promised to the Bank Integrity Unit of the Criminal Division’s Money Laundering and Asset Recovery Section, with the suggestion that these resources would enable the BIU to “be a strong partner” to the National Security Division in prosecuting corporate sanctions violations. In a related development, the DOJ joined the Departments of Commerce and Treasury in issuing the first joint advisory on enforcement trends and government expectations in the sanctions and export controls space, urging companies to “implement[] rigorous compliance controls” in this area.

- **New guidance on selection of monitors in DOJ Criminal Division matters**

Largely reiterating principles articulated in similar memoranda in recent years, but incorporating more recent pronouncements on (1) the absence of any presumption for or against monitors; and (2) the 10 “non-exhaustive factors” Criminal Division prosecutors are to consider when determining whether a monitor is necessary in a particular matter, the Criminal Division’s latest memorandum also extended the cooling-off period for a monitor from two to three years and made explicit the requirement that all monitor candidates be submitted and selected “in keeping with the Department’s commitment to diversity, equity, and inclusion” and that corporate resolution documents specify this requirement.

This flurry of activity by the DOJ follows revisions to the Criminal Division’s Corporate Enforcement Policy announced in January (discussed [here](#)) and the DOJ’s Criminal Fraud Section issuing its “Year in Review” for 2022 (discussed [here](#)), and it was accompanied by the announcement of the DOJ’s first significant corporate criminal enforcement action of the year. While these announcements clearly reflect the extent to which corporate criminal enforcement is a central focus of DOJ attention and resources, much remains to be seen about how these policies are implemented and whether they lead to more investigations and enforcement.

What cannot be doubted is the advisability of proactively investing in compliance ahead of any increase in enforcement activity and making such investments guided by counsel experienced in corporate criminal investigations and enforcement in the white-collar and national security arenas. The Alston & Bird White Collar, Government & Internal Investigations Team offers significant relevant interdisciplinary experience, including from former senior leaders in the DOJ’s Criminal Division, National Security Division, and U.S. Attorneys’ Offices, as well as from a deep bench of experts in international trade regulatory issues. We stand ready to help you to ensure you are fully prepared to meet the challenges of the fast-moving and ever-evolving government enforcement landscape.

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