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Deputy Attorney General Announces Renewed DOJ Focus on Corporate Criminal Enforcement

On October 28, 2021, during a speech at the American Bar Association's 36th National Institute on White Collar Crime, Deputy Attorney General ("DAG") Lisa O. Monaco described the enforcement priorities of the United States Department of Justice ("DOJ") in the area of corporate criminal investigations and prosecutions.¹ She also announced "three new actions" DOJ is taking to "strengthen" its response to corporate crime as well as a plan to study "additional changes to help further invigorate the department's efforts to combat corporate crime."

At the outset of her remarks, Deputy Attorney General Monaco assessed the "current enforcement landscape" and observed an "increasing national security dimension," a rise of "data analytics" in criminal investigations, and the emergence of technological and financial tools leading to "new schemes that exploit the investing public."

The DAG emphasized that individual accountability will be a high priority to DOJ. She stated: "[a]ccountability starts with the individuals responsible for criminal conduct" and the "department's first priority in corporate criminal matters [is] to prosecute the individuals who commit and profit from corporate malfeasance."

The Deputy Attorney General also made clear that DOJ will dedicate additional resources to corporate criminal investigations and prosecutions. According to the DAG, DOJ is committed to "find ways to surge resources to the department's prosecutors," including a new squad of FBI agents that "will be embedded in the Department's Criminal Fraud section." She explained that the "department will not hesitate to take action when necessary to combat corporate wrongdoing" and will "urge prosecutors to be bold in holding accountable those who commit criminal conduct."

Three New Actions to Strengthen Response to Corporate Crime

Deputy Attorney General Monaco articulated three specific "actions that the department is taking . . . to strengthen the way [it] respond[s] to corporate crime." Those three actions are as follows:

First, DOJ will restore prior guidance "making clear that to be eligible for any cooperation credit, companies must provide the department with all non-privileged information about individuals involved in or responsible for the misconduct at issue." In particular, "a company must identify all individuals involved in the misconduct, regardless of their position, status or seniority. It will no longer be sufficient for companies to limit disclosures to those they assess to be 'substantially involved' in the misconduct."

Second, the Deputy Attorney General will issue "new guidance to prosecutors regarding what historical misconduct needs to be evaluated when considering corporate resolutions. . . . Going forward, prosecutors will be directed to consider the full criminal,

¹ Lisa O. Monaco, Deputy Attorney General of the United States Department of Justice, Deputy Attorney General Lisa O. Monaco Gives Keynote Address at ABA's 36th National Institute on White Collar Crime (Oct. 28, 2021), available [here](#).

civil and regulatory record of any company when deciding what resolution is appropriate for a company that is the subject or target of a criminal investigation.”

Third, the Deputy Attorney General will “rescind” guidance suggesting “that monitorships are disfavored or are the exception.” Instead, the Deputy Attorney General will instruct that the Department is “free to require the imposition of independent monitors whenever it is appropriate to do so in order to satisfy our prosecutors that a company is living up to its compliance and disclosure obligations under the DPA or NPA.”

Key Takeaways

DOJ’s renewed emphasis on white collar criminal enforcement was clearly delivered by the DAG and is likely to be clearly received by federal prosecutors around the country. It appears certain that additional resources will be devoted to corporate criminal investigations and prosecutions and that there will be a corresponding uptick in those investigations and prosecutions.

Companies should carefully consider their compliance programs to ensure that they adequately monitor for and remediate potential misconduct in anticipation of potentially being evaluated by DOJ on whether the company possesses “a culture of compliance and a sense of accountability.” It will become even more essential for companies to identify potential risk areas and responsibly address concerns about improper conduct so that the company is well positioned to respond to questions and issues that may capture the attention of DOJ investigators and prosecutors.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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