

Update from DOJ's Corporate Crime Advisory Group

Expect Continued Focus on Disclosures, Compliance, Accountability



SEPTEMBER 26, 2022

AUTHORS

Alyse Constantinide, Evynn Overton, Josh Van Eaton, Majidah Cochran

Background

Deputy Attorney General (DAG) Lisa Monaco recently delivered a [speech](#) to the NYU Program on Corporate Compliance and Enforcement announcing ways the Department of Justice (DOJ) will “further strengthen how [it] prioritize[s] and prosecute[s] corporate crime.” Last October, DAG Monaco [announced](#) DOJ’s creation of a Corporate Crime Advisory Group to review enforcement efforts and outlined certain revisions to DOJ’s existing corporate criminal enforcement policies and practices. DAG Monaco’s recent remarks report on the Advisory Group’s work.

DOJ will continue to focus on familiar themes: individual accountability, consideration of prior misconduct, and the availability of corporate monitorships, where appropriate. DAG Monaco’s speech highlights five key areas the DOJ seeks to revitalize:

- ◆ **Individual Accountability, Expedited Investigations, and Timely Disclosures:** DAG Monaco reiterated that DOJ’s top priority is prosecuting individuals “who commit and profit from corporate crime.” DOJ will empower prosecutors by removing procedural hurdles and expediting investigations of individuals, inducing cooperating companies to disclose key evidence quickly. Accordingly, DOJ seeks to end the practice of “gamesmanship” in untimely disclosures by denying cooperation credit to companies who cause “undue or intentional delay in producing information or documents.”
- ◆ **History of Misconduct:** DAG Monaco also provided additional guidance about how DOJ evaluates historical misconduct. DOJ will give greater weight to domestic criminal resolutions and prior wrongdoing involving the same personnel or management as the current misconduct in a given investigation. Alternatively, DOJ will afford less weight to criminal resolutions that occurred more than ten years before the conduct currently under investigation and to civil or regulatory resolutions that occurred more than five years prior to the current conduct. DOJ will consider similarity in root causes between current and prior misconduct, disfavor multiple, successive non-prosecution or deferred prosecution agreements with the same company, and bring charges or require guilty pleas where facts and circumstances require. DAG Monaco emphatically stated that “times have changed,” dismissing the idea that corporations can still operate under the notion that “criminal resolutions can be priced in as the cost of doing business.”
- ◆ **Voluntary Self-Disclosures:** DAG Monaco stated that the “clearest path” for a company to avoid a guilty plea or an indictment is voluntary self-disclosure. DOJ seeks to incentivize companies’ voluntary

disclosure of misconduct to the government and reward companies that have effective compliance programs. For example, DOJ may not seek guilty pleas where a company, absent aggravating factors, has voluntarily self-disclosed, cooperated, and remediated misconduct. Similarly, DOJ may forego an independent compliance monitor where a corporation, at the time of resolution, has implemented and tested an effective compliance program.

- ◆ **Independent Compliance Monitors:** DAG Monaco outlined three approaches intended to foster transparency and consistency regarding compliance monitorships: (1) the issuance of new guidance for prosecutors on the need, identification, selection, and oversight of corporate monitors; (2) the implementation of a documented corporate monitor selection process; and (3) the establishment of a tailored scope of every corporate monitorship.
- ◆ **Corporate Culture:** DAG Monaco stated DOJ will evaluate companies' compensation systems, identifying whether the company rewards compliance and sanctions criminal misconduct. DOJ will assess whether what a company says and does aligns with its compensation systems.

DOJ's public messaging shows a clear and continued emphasis on corporate criminal enforcement. DAG Monaco emphasized that the "[DOJ] will continue to find ways to improve [its] approach to corporate crime" and it will "continue to *seek targeted resources* for corporate criminal enforcement," which **includes a \$250 million** request from Congress for corporate crime initiatives next year.

Implications and Suggested Actions

- ◆ DAG Monaco's remarks highlight the immediate steps companies should take to decrease the likelihood of being subject to investigation or facing avoidable consequences from non-compliance. Particularly with respect to compliance with environmental laws, where companies face increasing scrutiny for environmental performance not only from governments but also many other stakeholders.
- ◆ Companies should consider proactive and timely self-disclosure of misconduct that could rise to the criminal level. Moreover, if companies choose to self-disclose, they should take care to ensure disclosures are comprehensive and accurate.
- ◆ Companies should understand prior misconduct, identifying personnel or management previously involved, the nature and conduct of prior misconduct, and any internal financial penalties assessed or administrative actions taken. Companies should take extra care to incorporate lessons learned and avoid repeat infractions, relying on DOJ guidance to [track and adapt compliance efforts](#) continuously.

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AUTHORS



Alyse Constantinide
Principal, Washington, DC
aconstantinide@bdlaw.com
+1.202.789.6076



Evynn Overton
Principal, Baltimore
eoverton@bdlaw.com
+1.410.230.1335



Josh Van Eaton
Principal, Washington, DC
jvaneaton@bdlaw.com
+1.202.789.6033



Majidah Cochran
Associate, Seattle
mcochran@bdlaw.com
+1.206.620.3036

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