

## **Department of Justice Ramps Up Scrutiny of Businesses In White-Collar Cases, Will Consider Using “Monitors”<sup>1</sup>**

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Deputy U.S. Attorney General Lisa Monaco, in a speech on October 28, 2021 at the American Bar Association’s White-collar National Institute Summit in Miami, announced three new initiatives relating to the prosecution of white-collar crime matters, particularly as they relate to companies.

First, to the extent a company under investigation wants credit for cooperation, it will be required to turn over all non-privileged information about all individuals involved in the alleged wrongdoing, regardless of position.

Monaco said: “It will no longer be sufficient for companies to limit disclosures to those they assess to be substantially involved in the misconduct,” she said. “Such distinctions are confusing in practice and afford companies too much discretion in deciding who should and should not be disclosed to the government.”

Second, Monaco made clear that all past misconduct by the company will be considered when deciding the outcome of the case, whether or not the past misconduct is related to the current issues.

Finally, and significantly, Monaco made clear that prior reluctance by DOJ to use “corporate monitors” in criminal matters is rescinded. Prosecutors are now free to require the use of independent monitors. “I’m making clear 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,” she said. While companies have historically been able to agree to a resolution with DOJ and then move on without assuring monitoring, compliance, and remediation of misconduct, those days appear to be over.

These policy changes represent the latest announcement on the administration’s stated intent to re-invigorate white-collar prosecutions. Active compliance programs are an important part of business operations, particularly in highly regulated industries such as energy, finance, and health care. Companies face significant risks for ignoring, or only sporadically referring to, their compliance plans.

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