Lowenstein Sandler

Client Alert

White Collar Defense

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# DOJ Announces Updated Corporate Criminal Enforcement Policies Under Its New White Collar Enforcement Plan

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Last week, U.S. Department of Justice (DOJ) Head of the Criminal Division Matthew R. Galeotti announced key changes to the DOJ's enforcement priorities during his keynote address at the Securities Industry and Financial Markets Association (SIFMA) AML and Financial Crimes Conference.[1] Galeotti announced that the DOJ would be rolling out a new white collar and corporate enforcement plan that will balance prevention of fraud and criminal offenses, victims' rights, and protection of U.S. citizens, with minimization of compliance costs to lawful U.S. businesses.[2]

At the core of this new plan is focus, fairness, and efficiency by all U.S. prosecutors and alignment with the new administration's "America First" initiative. As evidence of its refocused priorities, Galeotti discussed the DOJ Criminal Division's review of all existing non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs) it has with defendant companies in order to identify where the NPAs and DPAs can be terminated early, in particular in instances in which the company voluntarily self-reported and the company's new compliance program is well-designed and implemented since the prior criminal resolution.

The new white collar and corporate enforcement plan laid out 10 key areas that the DOJ Criminal Division will be focusing its prosecutorial energies on going forward:

1. Waste and fraud, including health care fraud, that hurt the American economy
2. Trade and customs fraud, including tariff evasion
3. Market manipulation with a focus on fraud by or through Chinese-affiliated companies listed on U.S. exchanges
4. Investment fraud that targets American households, including Ponzi schemes and elder and veteran fraud
5. Sanctions violations and other conduct that threatens national security, particularly transactions by or for drug cartels or foreign terrorist organizations
6. Direct support by companies to foreign terrorist organizations, including the recently listed drug cartels
7. Money laundering by companies used in the manufacture of illegal drugs
8. Unlawful manufacture or distribution of narcotics and opioids such as fentanyl, including by medical professionals
9. Bribery and other money laundering offenses that impact U.S. national interests, undermine U.S. national security, or enrich foreign corrupt officials
10. Use of digital assets in furtherance of criminal activity, especially facilitating drug money laundering or sanctions evasion[3]

Notably, despite the administration's pause on the Foreign Corrupt Practices Act (FCPA), the Criminal Division's new priorities heavily focus on bribery prevention.[4]

In furtherance of the DOJ's new white collar enforcement plan and consistent with the goal of focus, fairness, and efficiency, Galeotti specifically announced revisions and clarifications of the following three policies, effective as of May 2025:

## 1. Corporate Enforcement and Voluntary Self-Disclosure Policy

The DOJ has updated its Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) to further incentivize companies that voluntarily self-report criminal conduct to the DOJ. Under the revised CEP, the DOJ will no longer recommend criminal prosecution if the company:

- Discloses the full extent of the misconduct to the DOJ Criminal Division or other DOJ office that works with the Criminal Division
- Fully cooperates with the DOJ's investigation
- Can show it "timely and appropriately" remediated the criminal conduct prior to the self-report
- In the course of the investigation, did not engage in conduct that raised the level of harm, severity, or pervasiveness of the criminal conduct, and there is no indication that the company had engaged in similar criminal conduct within the last five years[5]

The final factor is based on prosecutorial discretion, and even in the event of an aggregating factor, the prosecutor can decide based on the facts and circumstances whether or not criminal recommendation is warranted. The disclosing company will still need to pay all forfeiture and victim restitution as a result of the criminal conduct, and the resolution will be made public.

Additionally, even in cases where the company voluntarily disclosed in good faith but does not qualify under the foregoing factors (e.g., the DOJ is already aware of the misconduct or a whistleblower reports the misconduct first), the DOJ will still recommend lowered sentencing and no compliance monitor.[6]

Specifically, the DOJ will recommend a non-prosecution agreement with a term of fewer than three years, 75% reduction of the criminal fine, and no monitor.[7] These revisions to the CEP hopefully will result in more consistency across DOJ matters with respect to declinations, as the prior version of the CEP was somewhat vague and arguably inconsistently applied.

## 2. Monitor Selection Policy

The DOJ issued its new monitor policy to address (1) when appointing a monitor is necessary and (2) when the appointment is necessary, how to tailor the monitor's review and directives to reduce unnecessary compliance costs while addressing the underlying risk of company recidivism.[8]

### a) Determining whether a monitor is necessary

Broadly, the DOJ revised its monitor policy to include four factors for prosecutors to consider when deciding whether a monitor should be imposed on a company that engaged in criminal misconduct:

1. Nature and seriousness of the conduct and the risk that it will happen again
    - If the criminal conduct is frequent and the nature of the conduct hurts U.S. interests or is a threat to national security, then a monitor may be warranted. Examples that the DOJ offers include sanctions evasion, trade fraud, terrorist financing, and narcotics trafficking.

2. Availability of other effective independent government oversight
    - If the company's primary regulator has a demonstrated history of strong compliance program implementation, a monitor may not be necessary to mitigate the misconduct. However, if the criminally engaged company is a repeat offender under the primary regulator, then a DOJ monitor may need to be appointed.

3. Efficacy of the company's compliance program and culture of compliance at the time of resolution
    - If the company engaged in criminal conduct under different leadership than what is currently in place, or if the company has voluntarily engaged third-party consultants or auditors since the misconduct to change the company's culture and increase its compliance program, this can indicate that a monitor is not needed due to the self-correcting policies. Additionally, companies that have taken action against employees or leadership that engaged in the misconduct prior to the DOJ investigation are less likely to need a monitor.

4. Maturity of the company's controls and ability of the company to test and update its compliance program
    - In conjunction with the third factor, whether the offending company's new compliance program and internal controls have been tested will be a deciding factor in appointment of a monitor. If the company can prove that its new program adequately detects and prevents criminal misconduct and fraud, a monitor may not be needed. However, if the program is too new, there may not have been time to test its efficacy, in which case the monitor can assist with that process.

b) Tailoring and focusing the monitorship

In response to business concerns regarding monitorship oversight (including the perception that the monitor has an "open checkbook" and the disruption to business operations caused by the intrusiveness of a multiyear monitorship), the DOJ also issued guidance on how it will better tailor the scope of the monitor's directive in those cases where a monitor is needed. These efforts further evidence the DOJ's overarching goal of narrowly tailoring punitive measures taken against criminally liable companies.

The DOJ will now consider three factors when imposing a monitorship following a criminal disposition, as follows:

1. The monitor's costs should be proportionate to (a) the severity of the misconduct (while taking into account the fines and forfeitures already paid out); (b) the profits made by the malfeasant company and, to the extent it has a parent company, the organization as a whole; and (c) the company's size and risk profile.
    - Included in this proportionality analysis is ensuring that the monitor is minimizing their costs by imposing an hourly rate cap and submission of a budget and personnel plan to the DOJ and the company. This plan is subject to DOJ review and approval prior to the beginning of the monitorship.

2. There must be at least biannual meetings between the monitor, the company, and the DOJ, where the monitor will report progress and articulate its expectations of the company.

3. The monitor's tenure should be collaborative with the DOJ and the company, with the ultimate goal of a tailored and risk-based compliance program reasonably designed to prevent any further criminal activity, particularly of the nature of the action from which the prosecution was brought.

In addition to the foregoing, the DOJ detailed a step-by-step process for how to determine a monitor is needed, nominate a monitor, and outline the monitor's objective for this company's remediation.

## 3. Corporate Whistleblower Program

The DOJ also announced revisions to the Corporate Whistleblower Awards Pilot Program (WAPP), which was initially launched in August 2024.[9] These revisions reflect updated DOJ priorities under the new administration. Under the WAPP, whistleblowers are eligible for a monetary award when they provide information about corporate criminal misconduct that leads to forfeiture exceeding $1 million in net proceeds, subject to the whistleblower meeting a number of prerequisites.

The revisions to the WAPP expand the qualifying program areas to include (a) fraud/deception against the United States in connection with federally funded contracting or federal programs; (b) trade, tariff, and customs fraud and related offenses; (c) violations to federal immigration law; and (d) sanctions-related violations, or support of criminal organizations to further terrorism, drug or narcotics trafficking, or money laundering. The revised WAPP also expands the scope of health care fraud that will qualify.

In conjunction with these revisions to the WAPP and the CEP, for a limited time starting May 2025, the DOJ will allow companies that receive a whistleblower's report internally to still qualify for the presumption of no criminal action by the DOJ when the company (1) voluntarily self-reports the criminal conduct to the DOJ within 120 days of receiving the whistleblower's submission, even if the whistleblower reports to the DOJ before the company does, and (2) meets the other requirements for voluntary self-disclosure and presumption of a declination under the CEP.[10]

## Conclusion

Galeotti's announcement is just the beginning of many anticipated changes to come in white collar criminal enforcement and alignment with the new administration's priorities. While we await additional guidance on changes

to the FCPA , we recommend clients review their whistleblower policies and compliance program in the interim and focus on compliance in areas that the DOJ has identified as priorities in its new plan.

Lowenstein Sandler continues to monitor these updates. For more information or clarifications to this Client Alert, please contact your primary Lowenstein Sandler white collar attorney or the authors of this article.

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[1] "Keynote Address: Department of Justice," May 12, 2025, available at https://www.sifma.org/.
[2] *See* Dept. of Justice Office of Public Affairs, "Head of the Criminal Division, Matthew R. Galeotti Delivers Remarks at SIFMA's Anti-Money Laundering and Financial Crimes Conference," May 12, 2025, *available here*.
[3] *Id.*
[4] *See* "Executive Order 14209, Pausing Foreign Corrupt Practices Act Enforcement to Further American Economic and National Security," Feb. 10, 2025.
[5] *See* "Revised Corporate Enforcement and Voluntary Self-Disclosure Policy," U.S. Dept. of Justice Criminal Division, No. 9-47.120, May 12, 2025, *available here*.
[6] *Id.*
[7] *Id.* at 2.
[8] *See* "Memorandum on Selection of Monitors in Criminal Division Matters," U.S. Dept. of Justice Criminal Division, May 12, 2025, *available here*.
[9] For more information on the WAPP, *see* "Criminal Division Corporate Whistleblower Awards Pilot Program Fact Sheet," Dept. of Justice Criminal Division, *available here*.
[10] "Criminal Division Corporate Enforcement," U.S. Dept. of Justice Criminal Division, May 12, 2025, *available here*.

## Contacts

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