

Preparing for the 'surge': Enhanced corporate enforcement is coming

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After a predictable lull in corporate enforcement actions during the recent transition between administrations, and following a near quarter-century low in such actions under the previous administration, the Department of Justice announced this week that a "surge" of corporate enforcement is coming.

Recent comments from DOJ officials indicate that, in addition to a significant increase in enforcement actions, updated policies and enhanced resources tailored to advance the administration's priorities are near at hand.

The enforcement "surge" will include a renewed focus on sanctions and export control issues, with a heavy focus on Iran, China, North Korea, and Russia. Notably, China enacted the Anti-foreign Sanctions Law in August 2021 to counter U.S. and EU sanctions and export control laws.

That law forces multinational companies to choose whether they will comply with U.S. and EU law or China law. In such situations, companies should consider the impact of possible Chinese retaliation in making their compliance decisions. For more information, see related C&M Alert.¹

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One notable development in support of the surge is the recent designation of a squad of FBI agents who will be assigned full-time to the DOJ Fraud Section.

This will enhance the Fraud Section's ability to investigate and prosecute market manipulation, healthcare fraud and alleged

False Claims Act violations among other efforts. This squad will complement the FBI's dedicated international corruption squad in the Washington Field Office and the U.S. Postal Inspectors' squad already assigned to the Fraud Section.

Now is a critical time for companies to review and assess compliance programs, to ensure not only that adequate controls are in place but that they are actively pursuing a culture of compliance.

Cryptocurrency is also slated to receive heightened DOJ attention, particularly virtual currency exchanges under the Bank Secrecy Act. Deputy Attorney General Lisa O. Monaco announced last Wednesday that the newly created National Cryptocurrency Enforcement Team will combine the expertise of several Criminal Division sections, as well as detailed prosecutors from U.S. Attorneys Offices to "root out abuse" on cryptocurrency platforms and prosecute associated offenses, including fraud, ransomware payments and money laundering.

Monaco's announcement follows the U.S. Department of the Treasury's Office of Foreign Assets Control imposition of sanctions² on a Russian virtual currency exchange as a result of its role in facilitating ransomware payments

With many key DOJ officials now in place, updated policies can also be expected. Last week, Principal Associate Deputy Attorney General John Carlin noted that these changes will include how the DOJ approaches corporate resolutions like non-prosecution and deferred prosecution agreements – including with respect to the weight given to corporate cooperation and policies regarding the import of individual accountability in the resolution process.

The DOJ has also suggested that it is seeking broader input as to other policy changes or updated guidance. Monaco will likely issue additional guidance on these issues in the coming days and weeks.

Now is a critical time for companies to review and assess compliance programs, to ensure not only that adequate controls are in place but that they are actively pursuing a culture of compliance. As always, companies contemplating self-reporting an issue under a DOJ program should consider engaging outside counsel to help navigate the process.

Those companies already subject to NPAs, DPAs or other government agreements should ensure not only strict compliance with those agreements but also continue to closely monitor and think broadly about compliance as a crucial piece of their corporate culture.

Notes

¹ <https://bit.ly/3ATWMnl>

² <https://bit.ly/3jdOGji>

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