

March 4, 2022

DOJ Delivers Stark Message About Corporate Cooperation

As we noted in our [year-end memo](#), DOJ previewed last fall a crackdown on corporate misconduct and the resurrection of Obama-era policies that make it harder for companies to earn cooperation credit and leniency. Yesterday, speaking at the ABA Institute on White Collar Crime, Attorney General Merrick Garland and Assistant Attorney General for the Criminal Division Kenneth Polite furthered that message: Companies under investigation must identify everyone connected to the suspected misconduct, and credit-worthy remediation may in some circumstances mean cleaning house at the top even where the most senior executives were not directly involved.

In his [speech](#), AG Garland underscored DOJ's renewed focus on individual corporate malefactors and announced that DOJ was backing this commitment with more funding, more investigative agents, more DOJ attorneys, and "force-multipliers" to support white-collar enforcement initiatives. One force-multiplier is corporate cooperation: "[T]o be eligible for any cooperation credit, companies must provide [DOJ] with all non-privileged information" about "all individuals" involved in or connected to the conduct under investigation, "regardless of their position, status, or seniority, and regardless of whether a company deems their involvement as 'substantial.'"

In his own [remarks](#), AAG Polite added another element: True cooperation, he said, may in some circumstances require removal of top leadership, even if not involved in the wrongdoing, to rectify a compliance culture that facilitated or turned a blind eye to wrongdoing. "[E]ven if there is not any evidence that a CEO personally committed a crime, . . . a corporation should examine whether a change in leadership is necessary . . . because [the CEO] modeled poor ethical behavior for the workforce, or fostered a climate in which subordinates committed wrongdoing with intent to benefit the company, or permitted weak internal controls that allowed the crimes of individuals to go undetected."

If ever there were a time for companies to examine their compliance regimes, this is it. As AAG Polite made clear, companies must have a compliance program that ensures employees are "informed, trained and empowered to choose right over wrong," and that "immediately detects, remediates, disciplines, and then adapts" when the wrong choice is made. While we hope DOJ will apply these new policies thoughtfully and cautiously, companies should expect more searching examinations of their compliance culture and corporate responses to detected wrongdoing.

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