

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 57 No. 11 June 5, 2024

DOJ DISCLOSURE AND WHISTLEBLOWER PROGRAMS DEMAND 'PRUDENT' COMPANIES ADOPT AN EFFECTIVE INTERNAL INVESTIGATIONS STRATEGY

Over the past year, federal prosecutors have issued new policies aimed at corporations. The policies include voluntary self-disclosure guidelines and financial and other incentives for whistleblowers. Prudent businesses should create a robust internal investigations strategy, including when to hire outside counsel and how to handle whistleblower complaints.

By William J. Hochul, Jr. *

Federal prosecutors announced several noteworthy initiatives over the past year aimed at corporations, including voluntary self-disclosure (“VSD”) programs and multiple whistleblower policies. These policies and programs, combined with statements of prosecutors and existing guidelines of the Department of Justice (“DOJ”), serve as a warning that enhanced enforcement and investigations of companies may be on the way.

In view of these risks, prudent businesses should create a robust internal investigation strategy. The plan should include guidelines on when to engage outside counsel and how to deal with whistleblower complaints. By instituting and then leveraging the plan, companies will not only get ahead of the risks created by the new government policies, they will also position themselves to take advantage of some aspects of those policies.

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THE YEAR IN PARTIAL REVIEW

On May 3, 2023, a high-ranking DOJ official addressed the Ethics and Compliance Initiative Impact Conference. After describing a perceived confluence of corporate crime and national security, the official reported that “every DOJ component and office with any responsibility for corporate enforcement matters now has a VSD policy in place.”¹ The speech contained instances where DOJ declined to take enforcement action against companies that “promptly and voluntarily” disclosed misconduct, remediated, and cooperated with government authorities.²

¹ Remarks as delivered by Principal Associate Deputy Attorney General Marshall Miller on the day listed, available at <https://www.justice.gov/opa/speech/principal-associate-deputy-attorney-general-marshall-miller-delivers-remarks-ethics-and>.

² *Id.*

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