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U.S. DEPARTMENT OF JUSTICE'S REVISED COMPLIANCE GUIDANCE: DOJ TACKLES CLAWBACKS AND EPHEMERAL MESSAGING

Earlier this year, the U.S. Department of Justice ("DOJ") announced new compliance guidance on compensation structures to incentivize compliance and the use of personal devices and messaging apps to engage in business communications. Although it is still too early to know how these policies will be applied in practice, both guidance announcements provide useful insight into how DOJ is thinking about these issues and how companies may want to modify their compliance programs to achieve the best results if they ever find themselves in front of DOJ or other regulators.

By Dan Kahn *

INTRODUCTION

Earlier this year, the U.S. Department of Justice ("DOJ") announced new compliance guidance on compensation structures to incentivize compliance and the use of personal devices and messaging apps to engage in business communications. The much-anticipated guidance, which Deputy Attorney General ("DAG") Lisa Monaco announced at the ABA's 38th Annual National Institute on White Collar Crime on March 2, 2023,¹ made good on her promise that DOJ's

Criminal Division would be tackling these two issues when she updated DOJ's corporate enforcement policies in September 2022.² The guidance comes in the form of (1) a three-year "pilot program" that will require and reward clawbacks by the company related to compliance failures (the "DOJ Clawback Pilot Program")³ and (2) sections on financial incentives for compliance and the use of personal devices and messaging apps newly

¹ *Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime* (March 2, 2023), available at <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national>.

² Memorandum from the Deputy Attorney General Lisa Monaco, *Further Revisions to Corporate Criminal Enforcement Policies Following Discussions with Corporate Crime Advisory Group* (Sept. 15, 2022) available at file:///C:/Users/dkahn/Downloads/2022.09.15_ccag_memo_0%20(1).pdf.

³ *The Criminal Division's Pilot Program Regarding Compensation Incentives and Clawbacks* (March 3, 2023), available at <https://www.justice.gov/criminal-fraud/file/1571941/download>.

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