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DOJ'S NEW GUIDANCE ON CORPORATE CRIMINAL ENFORCEMENT AND THE IMPACT ON SECURITIES AND COMMODITIES CASES

Last September Deputy Attorney General Lisa Monaco provided an update on DOJ's guidance on its corporate criminal enforcement. In this article, the author discusses the new guidance, observing at the outset that the new guidance provides insights into how DOJ will reward and punish corporate behavior and includes important lessons for companies and defense attorneys alike.

By Daniel Kahn *

On September 15, 2022, the U.S. Department of Justice's ("DOJ") second-highest ranking official, Deputy Attorney General ("DAG") Lisa Monaco, provided guidance around DOJ's corporate criminal enforcement.¹ Although the U.S. Securities and Exchange Commission ("SEC") and Commodity Futures Trading Commission ("CFTC") are the primary regulators for securities and commodities-related cases against corporations, the DOJ has played an increasing role in these enforcement efforts in recent years, including in a spate of cases involving manipulative trading. As a result, the DAG's recent announcement sheds light on the factors that DOJ will be prioritizing in

investigating and prosecuting securities and commodities cases, among others.

In a speech and accompanying memorandum, the DAG reiterated DOJ's commitment to corporate criminal enforcement and addressed topics such as individual accountability, corporate cooperation, recidivism, voluntary self-disclosures, independent compliance monitors, off-systems communications, and the promotion of compliance through financial incentives. The guidance provides insights into how DOJ will reward and punish corporate behavior, and includes important lessons for companies and defense attorneys alike.

BACKGROUND

The September 15, 2022 announcement came approximately one year after DAG Monaco pledged to provide additional guidance around DOJ's corporate

¹ Deputy Attorney General Lisa O. Monaco Remarks on Corporate Criminal Enforcement, September 15, 2022 (available at <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-delivers-remarks-corporate-criminal-enforcement>).

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