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CORPORATE COMPLIANCE PROGRAMS TAKE CENTER STAGE IN 2019 WITH NEW GUIDANCE FROM THE DOJ AND OFAC

DOJ and OFAC each recently released new, detailed guidance on what prosecutors and regulators expect in evaluating corporate compliance programs. In this article, the authors describe the provisions in these releases, finding that they provide a comprehensive set of blueprints in creating, maintaining, and implementing such programs.

By Adam Lurie, Doug Davison, and Sean Solomon *

Signifying the continued importance of establishing and maintaining effective corporate compliance programs, both the U.S. Department of Justice and the U.S. Department of Treasury's Office of Foreign Assets Control have recently released new, detailed guidance on how prosecutors and regulators evaluate the effectiveness of compliance programs.

The guidance provides companies with specific benchmarks for establishing compliance programs that meet DOJ and OFAC expectations. While companies are not legally obligated to have formal compliance programs, both the DOJ and OFAC have explicitly stated that the existence and adequacy of corporate compliance programs will be considered when they are assessing the appropriate charge or penalty for a

particular violation. For example, while the DOJ has made clear that the existence of a compliance program is not sufficient, on its own, to justify not charging a corporation,¹ it has also noted that "the adequacy and effectiveness of [a] corporation's compliance program at the time of the offense" is a factor prosecutors should consider in determining whether to criminally charge a corporation.² Similarly, OFAC stated in its most recent guidance that it will "consider favorably" subject

¹ See, e.g., U.S. Dep't of Justice, Justice Manual, § 9-28.800, www.justice.gov/jm/justice-manual (noting that "the existence of a compliance program is not sufficient, in and of itself, to justify not charging a corporation for criminal misconduct undertaken by its officers, directors, employees, or agents").

² Justice Manual, § 9-28.300.

* ADAM LURIE is a partner in the New York and Washington, D.C. offices of Linklaters LLP, the Head of Linklaters' Dispute Resolution Practice in the U.S., and a leading practitioner in white collar criminal defense and investigation matters. DOUG DAVISON is a partner in the Washington, D.C. office of Linklaters, where he represents clients in cross-border proceedings, including alleged securities fraud, FCPA matters, regulatory compliance, U.S. economic sanctions and disclosure issues. SEAN SOLOMON is a Senior Associate in the Washington, D.C. office of Linklaters, where he focuses on U.S. economic sanctions and white collar criminal investigations. Their e-mail addresses are adam.lurie@linklaters.com, doug.davison@linklaters.com, and sean.solomon@linklaters.com.

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