



resolution economics LLC

Key Takeaways from Recent Regulatory Guidance

General Counsel, outside counsel, compliance executives, representatives of global regulatory bodies and forensic practitioners met and discussed a multitude of economic crime topics at the 2023 ABA White Collar Conference. The following highlights a few burgeoning topics:

Convergence of Combating White Collar Crime and National Security

- Substantial investment will be made in DOJ's National Security Division.
- Regulators are increasing cross-agency coordination to evaluate and enforce non-compliance, including assessing and recalibrating penalties and fines to deter improper activities.

Continued Evaluation of Impacts of the Monaco Memo

- Companies continue to assess how to obtain cooperation credit given unclear guidelines on what constitutes timely disclosure.
- Executive compensation must be evaluated to determine if, and how, it needs to change.
- Consideration will be given to recidivist activity and whether prior resolutions effected the intended change.
- It is no longer just a question of whether to self-disclose, but when and to whom.
- Corporations are less likely to obtain full credit if self-disclosure occurs months after a potential violation.
- Absent aggravating factors, guilty pleas may not be required if companies timely self-disclose, cooperate, and evidence remedial efforts.

Management of New Guidance & Coordination of Differences among Federal, State, and OIG Standards

- Given the slate of recently issued guidance, companies need to evaluate and implement any required changes to satisfy Federal, State, SEC, DOJ, and OIG regulations.
- Companies need to determine what information to disclose to which agency, and how to obtain and coordinate resolution among domestic regulatory agencies.
- Evaluate whether disclosure expectations are feasible given the nature and progression of internal investigations.

Shift to Individual Accountability

- Fines and penalties will shift to individuals responsible for bad acts to protect shareholders and reward companies that incorporate compliance objectives into financial incentives.
- Resulting fines / penalties may be reduced by any clawback amounts successfully obtained or may be reduced by up to 25% of any clawback amounts not successfully obtained through good faith efforts.

Combat of Cyber & Crypto Crimes

- Agencies are doubling down on evolving strategies to detect and deter cyber and crypto crimes.
- Companies may be caught off guard by crypto enforcement as it is unclear which regulator has jurisdiction.
- Charges may include market manipulation, money laundering, or wire fraud rather than insider trading.

Maintenance & Accessibility of Employee and Third Party Electronic Data / Communications

- Companies need to develop tailored policies.
- Regulators will ask how data is preserved and accessed, specifically related to personal devices; answers will impact any resolution.
- Prosecutors will not accept representations at face value.

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For further information and discussion on these points or other enforcement updates, please contact us.



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