



New DOJ Guidance on White-Collar Prosecutions and Corporate Monitors

by Greg Brower and Evan Corcoran

In a pair of memoranda issued on May 12, 2025, Matthew Galeotti, the Department of Justice official currently leading the Department's Criminal Division, issued fresh guidance to all Criminal Division personnel. The first, with a subject line of "Focus, Fairness, and Efficiency in the Fight Against White-Collar Crime," acknowledges that white-collar crime "poses a significant threat to U.S. interests" and discusses specific areas of focus for white-collar cases, the importance of fairness in prosecuting corporations, and the need for efficiency in such matters. The second memo is an expanded discussion of the first memo's mention of a new monitor selection policy for Criminal Division matters. It is important for white-collar defense attorneys, in-house lawyers, and corporate compliance officers to understand what this new guidance may mean for the Trump DOJ's approach to white-collar enforcement going forward.

Highlights from the New Memos

As noted above, the broader memo opens with an acknowledgment that white-collar crime poses a significant threat and therefore remains an enforcement priority for the Criminal Division. However, in somewhat of a twist on the usual Criminal Division memo, this one also acknowledges that "overbroad and unchecked corporate and white-collar enforcement burdens U.S. businesses...." The memo admonishes prosecutors to avoid "overreach that punishes risk-taking and hinders innovation" and emphasizes that "the Division's policies must strike an appropriate balance between the need to effectively identify, investigate, and prosecute corporate and individuals' criminal wrongdoing while minimizing unnecessary burdens on American enterprise." With that, the memo lists several new enforcement priorities, emphasizes the need for fairness in regulatory enforcement, and discusses the importance of efficiency such matters.

New Enforcement Priorities

As with any new administration, the new Trump DOJ has sought to clarify its enforcement priorities for the next four years. In the white collar crime context, this new memo highlights several priorities, including the following:

1. Waste, fraud, abuse including health care fraud and federal program and procurement fraud;
2. Trade and customs fraud, including tariff evasion;

Greg Brower and **Evan Corcoran** are Shareholders with Brownstein Hyatt Farber Schreck, LLP. Mr. Brower is a member of WLF's Legal Policy Advisory Board.

3. Investor and consumer fraud;
4. Material support by corporations to foreign terrorist organizations and designated cartels;
5. Complex money laundering operations, including Chinese organized crime;
6. Violations of the Controlled Substances Act and the Federal Food, Drug, and Cosmetic Act;
7. Bribery that undermines U.S. national security or harms the competitiveness of U.S. businesses; and
8. Crimes against digital assets.

Not all of these are entirely new priorities relative to past administrations, but these are the areas where this DOJ is clearly intending to focus its time, attention, and resources going forward.

Emphasis on Fairness

A clear theme of the memo is the importance of fairness when investigating and deciding whether to prosecute corporations. The memo confirms that “the Department’s first priority is to prosecute individual criminals” and promises to “relentlessly” investigate individual wrongdoers and hold them accountable. The memo also makes clear that “not all corporate misconduct warrants federal criminal prosecution.” Prosecutors are directed to consider all forms of resolution, including non-prosecution agreements, deferred prosecution agreements, and guilty pleas, when deciding the appropriate disposition on a case-by-case basis. Specifically, prosecutors are reminded to conduct an individualized assessment of the facts and evidence in each case in order to achieve a fair result. Of note, the memo directs relevant Sections within the Division to review all existing non-prosecution and deferred prosecution agreements for fairness in terms of the length of their terms. And, going forward, the length of such terms should not exceed three years except in “exceedingly rare” cases.

Importance of Efficiency

While acknowledging that white-collar schemes are often complex and transnational and can, therefore, take substantial time to adequately investigate, the memo directs prosecutors to “take all reasonable steps to minimize the length and collateral impact of their investigations. Also under the category of efficiency, the memo clarifies that independent compliance monitors must only be imposed when necessary, meaning that only in situations where the offending company “cannot be expected to implement an effective compliance program or prevent recurrence of the underlying misconduct without such heavy-handed intervention.” The second memo is specifically focused on this monitor issue and includes the following relevant new guidance.

First, the memo specifically incorporates the 2008 Morford Memo issued by then-Acting Deputy Attorney General Craig Morford but explicitly supersedes all other prior monitor-selection memos issued by former Criminal Division heads. Beyond that, the memo contains two key updates relating to: (a) when a monitor is appropriate; and (b) when necessary, how a monitorship should be tailored. As for the appropriateness question, the memo details four considerations which can be summarized as follows:

1. Risk of recurrence of criminal conduct;
2. Availability and efficacy of other independent government oversight;
3. Efficacy of the compliance program and culture of compliance at the time of resolution;
4. Maturity of the company's controls and its ability to independently test and update its compliance program.

The memo offers three additional considerations on how to tailor the monitorship:

1. Costs must be proportionate with the severity of the conduct, the profits, if any, related to the misconduct, and the company's size and risk profile.
2. Regular "tripartite" meetings between the company, monitor, and government must take place during the pendency of the monitorship.
3. The monitorship must be collaborative and there must be an ongoing and open dialogue between all three parties.

Finally, the monitor memo provides updated guidance on how the Division's Standing Committee on the Selection of Monitors should continue to operate and how the monitor-selection process should be conducted with a reference back to the Morford Memo's basic criteria plus some additional detailed guidance.

Implications for Business Organizations

This new guidance is a response to what many observers believed was an overly aggressive approach to going after corporations for minor or technical regulatory violations during the Biden administration. Whether that is a fair characterization or not, this new DOJ guidance is clearly aimed at ensuring that U.S. businesses are treated fairly when it comes to DOJ investigations and prosecutorial decisions concerning the regulation of business activity. This makes it all the more important for targets of such investigations to seek out competent counsel for advice on how to best navigate this new reality.