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In New Policy, DOJ Will Add Compliance-Savvy Attorneys to Its Enforcement Teams

By Nina Youngstrom

When investigating and prosecuting corporate cases, the Department of Justice (DOJ) will now pair trial attorneys with attorneys who have experience “developing and testing compliance programs,” a top official said Oct. 12. That’s a departure from the way things have been done in recent years, when a single compliance expert housed in the Fraud Section essentially consulted on the compliance aspects of enforcement matters. It makes more sense to have an entire case team evaluate all the aspects of a corporate case consistent with the Principles of Federal Prosecution of Business Organizations, according to Assistant Attorney General Brian Benczkowski.

“I believe our prosecutors should consider the adequacy of a compliance program at the same time they are considering, for example, a company’s remedial actions or the timeliness of any voluntary self-disclosure. It makes little practical sense to outsource a separate review of the compliance program when considering the merits of a corporate matter,” Benczkowski said at the Achieving Effective Compliance conference held by New York University School of Law’s Program on Corporate Compliance and Enforcement. Therefore, in its hiring, the DOJ criminal division will focus on building a team of attorneys with “diverse” skills, he said. “That means not just attorneys with experience as prosecutors and in the courtroom, but also those who bring compliance experience to the table,” Benczkowski said. “In the context of corporate enforcement, having a trial attorney with experience litigating corporate cases paired with an attorney who has experience developing and testing corporate compliance programs allows us to leverage our talent, which should lead to better and more just outcomes.”

DOJ has been diving into compliance programs during fraud investigations for years. Prosecutors factor in compliance programs at the time of conduct and resolution of enforcement matters, as DOJ explains in various policies, including the 2008 Principles of Federal Prosecution of Business Organizations and the 2012 Foreign Corrupt Practices Act Corporate Enforcement Policy. DOJ in 2017 also issued the *Evaluation of Corporate Compliance Programs*, a set of extraordinarily detailed questions that prosecutors ask when deciding whether to file fraud charges against a corporation and/or individuals (RMC 3/6/17, p. 1).

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