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The role of data analytics in regulatory inquiries

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The Department of Justice (DOJ) has recently made clear that it will consider a company's use of data in its investigations into potential misconduct, such as violations of the Foreign Corrupt Practices Act[1] (FCPA). Specifically, prosecutors will assess whether a company's compliance department had access to internal data and whether this data was sufficiently analyzed before and during investigations in a way that would enable the detection of misconduct.

In a speech at a compliance and ethics conference,[2] The DOJ went so far as to recognize that data analytics "expedites case development [and] saves resources," and put all organizations on notice that the Justice Department is tackling enforcement with a "data-driven approach."

This focus on data analytics was also part of the April publication, the *Evaluation of Corporate Compliance Programs Guidance*.[3] The guidance itself offers no explicit details as to the data evaluation steps that the DOJ will take, but rather refers to it as an "evolving narrative arc" of the investigative process, leaving the interpretation and practice up to each company to build out for itself.

Whether as part of in-house analytic teams or through collaboration with external forensic data scientists, government agencies—such as the U.S. Securities and Exchange Commission (including the Division of Economic and Risk Analysis and the Office of Compliance Inspections and Examinations) and the U.S. Financial Industry Regulatory Authority, Brazil's Federal Prosecution Service and Office of the Comptroller General, and the UK's Financial Conduct Authority—are scrutinizing all sorts of underlying business data and delving far beyond the executive data summaries typically provided as part of an initial inquiry response.