

# Key Takeaways From the ACI FCPA Conference

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12 / 14 / 21

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At the American Conference Institute's 38th Annual Foreign Corrupt Practices Act (FCPA) Conference in Washington, D.C. earlier this month, several representatives of the Department of Justice (DOJ) and Securities and Exchange Commission (SEC) provided further details on recent agency pronouncements regarding enforcement priorities and corporate compliance expectations. Our key takeaways are outlined below.

## Looking Back and Looking Ahead

- Despite acknowledging fewer FCPA resolutions in 2021, both the DOJ and SEC emphasized that the number of settlements is not indicative of the agencies' strong pipeline of cases. The SEC predicted that there will be more settlements next year.
- The agency representatives stressed that they are not waiting for companies to self-report, but rather are proactively investigating potential misconduct through data mining, whistleblower tips and cooperation with international regulators. That being said, the speakers emphasized that it remains in a company's best interest to self-report misconduct to the government.
- The regulators acknowledged that the recently enacted Chinese data security and privacy laws may pose challenges for internal and government investigations, but noted that companies should not use these laws as a shield, and should instead actively discuss any issues with the agencies. See our November 3, 2021, client alert "[China's New Data Security and Personal Information Protection Laws: What They Mean for Multinational Companies](#)."
- The DOJ expects continued aggressive prosecution of individuals, as well as criminal charges related to corruption, such as money laundering and wire fraud, and international cooperation among foreign regulators.

## Updates to DOJ Corporate Enforcement Policy (the 'Monaco Memo')

- On October 28, 2021, Deputy Attorney General Lisa Monaco announced certain changes to the DOJ's policies on corporate enforcement. These remarks are commonly referred to as the "Monaco Memo." See our November 2, 2021, client alert "[Practical Steps To Address DOJ Changes to Corporate Enforcement Policies](#)."
- DOJ officials reiterated that to be eligible for cooperation credit, companies must disclose information about all individuals involved in the misconduct, regardless of seniority. Companies should not decide which employees are most relevant and/or culpable, as that assessment lies solely within the DOJ's purview.
- Regarding the relevance of other misconduct to an ongoing investigation, several DOJ officials made clear that the department expects companies to discuss the full breadth of their prior criminal, civil and regulatory history, which will assist prosecutors in holistically evaluating companies. Prosecutors will consider the recency, pervasiveness, participation and knowledge of senior management when deciding the weight to assign each incident of prior misconduct.
- DOJ panelists emphasized Deputy Attorney General Monaco's statements that there is not a default presumption against corporate monitors. In deciding whether to require external monitoring as part of a settlement, the DOJ considers the potential benefit to a company and the public, as well as the potential costs and impacts on a company's operations. The key consideration in these decisions is whether a company can show that its compliance program is mature and effective in identifying and remediating

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red flags and potential misconduct. For example, panelists noted, it would not be enough to have a whistleblower hotline; a company should demonstrate how complaints are received, investigated, assessed and resolved.

- Throughout the conference, government panelists focused on the importance of data analytics in the ordinary course

of monitoring and testing a company's compliance program. For example, data analytics may be used to identify irregular payments to third parties.

We remain available as a resource to discuss these and other enforcement developments.