

[From the Winter/Spring 2024 edition of the [White Collar Crime Committee Newsletter](#), published by the American Bar Association Criminal Justice Section's White Collar Crime Committee]

Cleaning Up the C-Suite: What DOJ Corporate and Individual Enforcement Trends May Be on the Horizon in 2024?

By Jackson Hobbs

“Fighting corporate crime is a top priority.”¹ First announced in the October 2021 “Monaco Memo,” the Department of Justice (DOJ) has made significant recent efforts to ensure public confidence in financial markets, discourage unlawful business practices, combat transnational corruption, and uphold the rule of law by enforcing criminal statutes against corporate organizations and individuals within them.²

On December 12, 2023, the DOJ updated the United States Senate Judiciary Committee about amplifying its white collar and corporate criminal enforcement efforts. The hearing, titled “Cleaning Up the C-Suite: Ensuring Accountability for Corporate Criminals,” provided insight on the DOJ’s progress on corporate enforcement to date and main points of emphasis in 2024.³

KEY TAKEAWAYS

1. **Taking a Whole-Of-Department Approach:** For the very first time, all 94 U.S. Attorney’s Offices have adopted a single voluntary self-disclosure policy for corporate misconduct.⁴ These policies, which the DOJ views as “black and white,” also require companies to “disclose *without delay*.”⁵ In addition, this “whole-of-department approach,” allows DOJ to pool resources, especially in “sophisticated and far-reaching cases requires breaking down complex criminal schemes, understanding cutting-edge markets, and analyzing terabytes or even petabytes of data.”⁶ Also in 2024, a key component of the Corporate Transparency Act comes into effect, requiring companies to report to the U.S. Treasury Department the names of their “beneficial

* Jackson Hobbs is an attorney at Lathrop GPM LLP in Kansas City, Missouri. He counsels and litigates for corporate clients, as well as chief executives, business owners and other individuals involved in high-stakes government investigations and civil and criminal enforcement actions.

¹ United States Department of Justice, Memorandum from Deputy Attorney General Monaco, “Corporate Crime Advisory Group and Initial Revisions to Corporate Criminal Enforcement Policies,” available online at <https://www.justice.gov/dag/page/file/1445106/download>, (accessed February 3, 2024).

² *Id.* at p. 1.

³ Committee on the Judiciary of the United States Senate, Statement of the United States Department of Justice, Hearing entitled, “Cleaning Up the C-Suite: Ensuring Accountability for Corporate Criminals,” presented on December 12, 2023, available online at <https://aboutblaw.com/bb6q>, (accessed February 3, 2024).

⁴ *Cleaning Up the C-Suite*, *supra* note 3, at p. 3; *see also* United States Attorneys’ Offices Voluntary Self-Disclosure Policy, available online at https://www.justice.gov/d9/2023-07/usao_voluntary_self-disclosure_policy_0.pdf (accessed February 3, 2024).

⁵ *Cleaning Up the C-Suite*, *supra* note 3, at p. 3.

⁶ *Id.*

owners.”⁷ The primary goal of the rules is to bring transparency to anonymous shell companies used to hide money laundering, finance terrorism and engage in other illegal activities.⁸ The DOJ’s recent presentation does not expressly mention the Corporate Transparency Act, but the DOJ has committed to “judge [its] progress,” based on its “own efforts and interagency partnership with Treasury, Commerce, and State Departments.”⁹

2. **Prioritizing Individual Accountability “Prior to or Simultaneously with” Resolution of Cases Against the Corporation:** The DOJ affirmed that when it comes to corporate enforcement, it will prioritize resolving cases against individuals within the organization before resolving claims against the company.¹⁰ This can sometimes present instances where careful consideration of conflicts of interest may be present and separate counsel for individuals within a company may be needed.

3. **Evolving Corporate Enforcement Efforts:** In recognition that there is a “rapidly increasing intersection between corporate crime and the risks that threaten U.S. national security,” the DOJ has emphasized several “new” areas of enforcement.¹¹ Those areas include: terrorist financing, sanctions evasion, export control circumvention, cyber and crypto-enabled crime, and white-collar threats to U.S. national security.¹²

In addition to these areas, the DOJ’s recent comments include references to various federal statutes including: the Foreign Corrupt Practices Act (FCPA), and the Bank Secrecy Act (BSA),¹³ and internal DOJ sections for enforcement, including: the Money Laundering and Asset Recovery Section (MLARS),¹⁴ which prosecutes financial institutions and their employees for violations of the Bank Secrecy Act, sanctions, money laundering and related offenses, and third party money launderers and kleptocrats; and the Computer Crime and Intellectual Property Section (CCIPS)¹⁵ along with the National Cryptocurrency Enforcement Team (NCET), which prosecutes cybercrime in its many forms, trade secret theft and other intellectual property offenses, and the growing number of crimes involving cryptocurrency;¹⁶ and National Security Division (NSD), which carries out the highest priorities of the DOJ to defend national security by investigating and prosecuting terrorism, espionage, sanctions and export violations, foreign malign influence, and malicious cyber activity; overseeing and supporting the Intelligence Community’s lawful use of

⁷ Geek Wire, “Rules targeting financial criminals will require new filings for startups and small businesses,” Lisa Stiffler, published on December 19, 2023, available online at <https://www.geekwire.com/2023/rules-targeting-financial-criminals-will-require-new-filings-for-startups-and-small-businesses/>, (accessed February 3, 2024).

⁸ *Id.*

⁹ *Cleaning Up the C-Suite, supra note 3*, at p. 16.

¹⁰ *Id.* at p. 3.

¹¹ *Id.*

¹² *Id.*

¹³ *Cleaning Up the C-Suite, supra note 3*, at p. 4.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at p. 7.

surveillance authorities to acquire intelligence; and reviewing the national security risks of proposed foreign investments in U.S. companies.¹⁷

RECENT ENFORCEMENT EXAMPLES

The DOJ cites its “whole-of-Department approach” as vital in its recent corporate and individual enforcement actions. For example, some major enforcement examples include:

1. **Binance:** Perhaps the most significant is the guilty plea taken by the Binance cryptocurrency company.¹⁸ Binance pled guilty to violating the Bank Secrecy Act, failing to register as a money transmitting business, and violating U.S. sanctions, and Binance’s CEO, Changpeng Zhao, pled guilty to causing Binance to violate the Bank Secrecy Act. Binance agreed to pay \$4.3 billion in penalties, to the imposition of an independent monitor, and to enhance its compliance program.¹⁹ Liability did not stop at the corporation though. Binance’s CEO, Changpeng Zhao, also pled guilty for causing Binance to violate the Bank Secrecy Act.²⁰

2. **Outcome Health:** Three former executives of Outcome Health, a Chicago-based health technology start-up company, were convicted after trial for their roles in a scheme targeting the company’s clients, lenders, and investors, and involved approximately \$1 billion in fraudulently obtained funds.²¹ The Outcome Health matter, similar to Binance, demonstrates that the DOJ is actively enforcing cases not only against the corporations, but also the individuals who perpetrate fraud.

3. **LaFarge:** The DOJ’s National Security Division has also been actively engaged in enforcing novel counterterrorism statutes against corporations. The NSD’s Counterterrorism Section worked with the U.S. Attorney’s Office for the Eastern District of New York and secured the Department’s first-ever corporate guilty plea to a charge that a company conspired to provide material support and resources to a foreign terrorist organization.²² That case was brought against Lafarge SA, a multinational cement company based in France.²³ It held the company accountable for the actions of its executives paid the equivalent of millions of dollars to ISIS to increase profits

¹⁷ *Id.* at p. 10.

¹⁸ *Id.* at p. 3.

¹⁹ *Id.* A more complete discussion of the Binance matter may be found on the Department of Justice, Office of Public Affairs, Press Release, dated November 21, 2023, available online at <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution> (accessed February 3, 2024). *See also*, *Securities and Exchange Commission v. Binance Holdings Limited, et al.*, Case No. 1:23-cv-01599 (D.D.C.).

²⁰ *Cleaning Up the C-Suite, supra note 3*, at p. 3.

²¹ *Id.* at p. 6. A more complete discussion of the Outcome Health matter may be found on the Department of Justice, Office of Public Affairs, Press Release, dated April 11, 2023, available online at <https://www.justice.gov/opa/pr/former-executives-outcome-health-convicted-1b-corporate-fraud-scheme> (accessed February 3, 2024). *See also*, *United States v. Shah, et al.*, Case No. 1:19-cr-00864 (N.D. Ill.).

²² *Cleaning Up the C-Suite, supra note 3*, at p. 12. A more complete discussion of the Lafarge S.A. matter may be found on the Department of Justice, Office of Public Affairs, Press Release, updated October 18, 2022, available online at <https://www.justice.gov/usao-edny/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorist> (accessed February 3, 2024). *See also*, *United States v. Lafarge S.A. and Lafarge Cement Syria S.A.*, Case No. 1:22-cr-00444 (E.D.N.Y.).

²³ *Cleaning Up the C-Suite, supra note 3*, at p. 12.

and market share in Syria—all while ISIS engaged in a campaign of violence during the Syrian civil war.²⁴ The LaFarge matter shows that the DOJ will not hesitate to hold corporations accountable—even if it results in the first-of-its-kind corporate guilty plea to a charge.

CONCLUSION

The DOJ’s recent hearing on “Cleaning Up the C-Suite,” confirms it will remain active in responding to and enforcing “a dynamic and evolving threat landscape.”²⁵ DOJ will not hesitate to use “all the legal authorities” in its “arsenal to defend the nation against threats from state and non-state adversaries.”²⁶ Both companies and individuals should maintain high standards to ensure they also adhere to a changing enforcement landscape to maintain compliance for white-collar corporations and individuals in 2024 and beyond.

²⁴ *Id.*

²⁵ *Id.* at p. 17.

²⁶ *Id.*