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Two Recent Corporate Pleas Affirm DOJ's Pledge to Crack Down on Criminal Enforcement

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Two recent criminal resolutions by the U.S. Department of Justice (DOJ) signal that DOJ is following through on Deputy Attorney General Lisa Monaco's recent pledge to crack down on corporate criminal enforcement.

NatWest Markets PLC (NatWest), a United Kingdom-based global banking and financial services firm, pleaded guilty to one count of wire fraud and one count of securities fraud for its role in manipulating U.S. Treasury markets through so-called "spoofing" schemes.¹ According to plea documents, through these schemes, NatWest traders profited by deceiving other market participants by placing "spoof" orders – orders that were intended to be canceled before execution but not before having the effect of (artificially) deflating or inflating the prevailing market price. In addition to pleading guilty, NatWest was sentenced to pay approximately \$35 million in criminal fines, restitution and forfeiture, serve a term of three years on probation, and engage an independent corporate compliance monitor.

One day after the NatWest resolution, DOJ announced it had resolved another high-stakes criminal fraud investigation, this one into Balfour Beatty Communities LLC (Balfour), one of the largest providers of privatized military housing to U.S. Armed Forces. Alleged to have engaged in a scheme to defraud the military by falsely certifying that it had met certain performance objectives in an effort to induce the service branches to pay performance incentive fees, Balfour pleaded guilty to one count of major fraud against the United States and was sentenced to pay more than \$65 million in criminal fines and restitution, serve three years of probation, and, like NatWest, engage an independent corporate compliance monitor.²

Both resolutions align with Deputy Attorney General Lisa Monaco's vow to toughen DOJ's approach to prosecuting corporate crime. In October 2021, she announced major changes to DOJ's "Corporate Criminal Enforcement Policies," signaling a sharp shift from the prior administration.³ Specifically, Deputy AG Monaco's policy changes focused on three key issues:

1. **Prior Corporate Misconduct** – Under the latest guidance, prosecutors are instructed to examine *all* of a company's prior criminal, civil and regulatory misconduct, regardless of whether the prior misconduct relates (or is even similar) to the conduct at issue in a particular investigation, and irrespective of where it took place. Now, prosecutors are directed to start from the position that *all* prior conduct, including whether, for example, the company was prosecuted by another country, may be relevant.
2. **Cooperation Credit** – Deputy AG Monaco also announced a return to prior – and more aggressive – guidance regarding cooperation credit. This policy change refers to a memorandum issued in 2015 by then-Deputy AG Sally Yates (colloquially known as the "Yates Memo"), which required corporations seeking cooperation credit to identify and provide, among other things, *all* individuals involved in or responsible for the corporate misconduct at issue. That standard was subsequently scaled back under the Trump administration; corporations were required to identify only those individuals believed to be "substantially involved" in the misconduct. With a return to the more aggressive standard,

corporations that seek credit for cooperation now must provide all non-privileged information about *all* individuals involved in the misconduct, regardless of position, status or seniority.

3. **Corporate Monitors** – In another return to previous guidance, Deputy AG Monaco announced that there is no longer a "default presumption" against the imposition of corporate monitors, an undertone that developed under the Trump administration's loosening of several DOJ policies. Deputy AG Monaco reaffirmed that DOJ is free to impose monitors when appropriate to satisfy prosecutors that a company is living up to its compliance and disclosure obligations under deferred- and non-prosecution agreements.

The NatWest and Balfour resolutions are consistent with this guidance. In the NatWest deal, DOJ highlighted the company's breach of a 2017 non-prosecution agreement, the state of NatWest's compliance program, and the company's past criminal and civil misconduct. Although it identified Balfour as a first-time offender with no history of misconduct, DOJ nonetheless contended that the company failed to maintain adequate compliance measures, as well as cited what DOJ described as a lack of cooperation with the government.

Taken together, and along with a promised "surge" in resources for corporate enforcement, these latest moves send a clear message that DOJ will be prioritizing white collar enforcement in the years ahead. In response, executives and companies – particularly those in heavily regulated industries – would be well-advised to actively reexamine their compliance programs and, if necessary, increase their investments in measures that focus on accountability and compliance. Where weaknesses are identified, companies should act swiftly to remediate and prioritize compliance. Not only can robust compliance measures help avoid instances of misconduct, but they can also better position a company to negotiate a resolution if in the crosshairs of a criminal investigation and prosecution.

If you have questions about how this shift in DOJ's "Corporate Criminal Enforcement Policies" could impact your company, please reach out to Alison Schurick or another member of Baker Donelson's [Government Enforcement and Investigations Practice](#).

¹ Press Release, U.S. Department of Justice, Office of Public Affairs, [NatWest Markets Pleads Guilty to Fraud in U.S. Treasury Markets](#) (Dec. 21, 2021)

² Press Release, U.S. Department of Justice, Office of Public Affairs, [Balfour Beatty Communities Pleads Guilty and Agrees to Pay Over \\$65 Million in Fines and Restitution for Fraud Scheme](#) (Dec. 22, 2021)

³ See Memorandum, U.S. Department of Justice, Office of the Deputy Attorney General, *Corporate Crime Advisory Group and Initial Revisions to Corporate Crime Enforcement Policies* (Oct. 28, 2021) at 3.