



“The kind of resolution you get is mostly dependent on how strong the government's case is, how strong is their evidence. Compliance is not the one piece that determines what resolution you can get.”

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Abstract

This high-level panel discussion brought together a diverse group of experts, including former Department of Justice officials, corporate compliance executives, and legal advisors, to provide comprehensive insights into the complex world of government investigations and corporate compliance programs.

The conversation spanned the entire lifecycle of an investigation, from initial disclosure decisions through resolution and ongoing monitoring, offering nuanced perspectives for compliance professionals navigating these challenging waters.

The discussion underscored the intricate and nuanced nature of corporate investigations and compliance programs in today's regulatory environment. While specific approaches may vary based on company size, industry, and risk profile, the experts consistently emphasized the importance of thorough analysis, genuine commitment to improvement, and ongoing, transparent engagement with regulators.

Key Takeaways

Voluntary Self-disclosure

- The decision to self-disclose requires a rigorous analysis of available evidence, legal considerations, and potential benefits, rather than an automatic response to discovered misconduct.
- Companies should carefully weigh the likelihood of the government independently discovering the issue, the strength of their remediation efforts, and the potential impact on ongoing operations.
- Companies may need to balance speed with thoroughness in their internal investigations.

Root Cause Analysis & Remediation

- Companies should consider radical solutions to eliminate risk entirely where possible, such as fundamentally changing business models or exiting high-risk markets.
- Effective remediation often requires broad changes across multiple business processes and functions, extending far beyond the specific area where misconduct occurred.
- Incorporating ethical culture assessments and decision-making frameworks into remediation efforts can address underlying issues and prevent future misconduct.



Government Expectations

- Regulators look for evidence of substantial, good faith efforts to improve compliance, including significant resource investments and structural changes to reduce risk.
- Having a strong "tone from the top" and an empowered, independent compliance function is crucial for demonstrating commitment to regulators.
- Programs should be data-driven, with regular testing and continuous improvement processes that can be clearly demonstrated to outside observers.

Evaluation of Corporate Culture

- Culture assessments should combine objective data (such as hotline reports and disciplinary actions) with subjective elements like surveys and employee interviews.
- Companies should use research-backed methods for culture assessment and be prepared to defend their approach and interpretations to skeptical regulators.
- Regulators are increasingly focused on evidence of a genuinely ethical culture, not just technical compliance with rules and procedures.

Coordination Between Other Functions

- Clear roles and alignment between functions is critical, especially post-resolution, to ensure a unified and effective approach to ongoing obligations.
- Compliance officers often take on a larger role in direct engagement with regulators after resolution, requiring strong internal partnerships and information sharing.
- Testing and improvements should span beyond traditional compliance boundaries to include areas like finance, sales, and procurement.

Factors In Corporate Resolutions

- Multiple factors are weighed in determining resolutions, with the strength of the government's evidence being a key consideration that may outweigh compliance efforts.
- Factors like pervasiveness of misconduct and prior history can be equally or more significant than compliance program effectiveness.
- The specific weights given to different factors can vary based on the individual prosecutors and the nature of the case.

Impact of Recent Legal Developments

- The end of the Chevron doctrine may create more uncertainty in regulatory interpretations but likely has limited direct impact on DOJ's criminal enforcement.
- Other recent cases, such as limitations on public corruption statutes, may require companies to update their policies while potentially creating challenges in setting global standards.
- Companies need to stay abreast of the evolving legal landscape and be prepared to adapt their compliance approaches accordingly.

Interim Reporting During Monitorship

- Reports typically cover program updates, testing results, new allegations, and ongoing cooperation efforts, with a level of detail that may vary based on regulator expectations.
- The level of scrutiny can vary significantly depending on the individual prosecutor's interest and experience with compliance matters, requiring companies to be adaptable in their approach.
- Companies should align internal stakeholders on a unified plan and message to ensure consistency and credibility in their reporting to regulators.