

BakerHostetler



Fraud and Government Enforcement in Times of
Crisis

April 29, 2020

Speakers



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Topics

- Past Task Forces
- Current DOJ Covid-19 Efforts
- Risks for Companies Created by Covid-19
- Importance of Compliance in Times of Crisis – General
- Honing your Compliance Program to Address Covid-19 Risk – General
- Key Questions to Tailor your Compliance Programs During Covid-19
- Takeaways

Past Task Forces

- 2001 Enron Task Force
- 2005 Hurricane Katrina Fraud Task Force
- 2009 Financial Fraud Enforcement Task Force

DOJ Covid-19 Response

DOJ Coronavirus Response Page

- Fraud: Health Care, Crypto, IRS/Stimulus
- Covid-19 Hoarding and Price Gouging Task Force
 - March 23 Executive Order invoking Defense Production Act; HHS List of Scarce Products
 - Prohibits hoarding and selling in excess of “prevailing market prices”
 - AG Barr Memo
- Hoarding and Price-Gouging Cases to Date

Risks for Companies Created by Covid-19

- Government Contractors
 - Procurement Collusion Strike Force
 - False Claims Act Enforcement
- CARES Act Loan Lenders and Recipients
- Distressed Companies and Crisis Cartels

Disclosure Risks for Public Companies

- March 23, 2020: SEC issued a warning urging companies to be mindful of disclosure procedures and insider trading prohibitions.
- April 8, 2020: Joint statement between SEC and Division of Corporate Finance urging companies to provide as much information as possible about their current financial and operating status, as well as future operational and financial planning.

Honing Your Compliance Program to Address Covid-19 Risk

- Continued meaningful evaluation of risks in light of pandemic
- Tone from the top
 - Ensure compliance programs are being followed and enforced
 - Understand risks at all levels as well as reputational and financial impacts
- Training and communication on compliance policies, laws, and regulations
- Third-party hotline and investigations
- Closely follow legislation and policy updates

Importance of Compliance in Times of Crisis

- DOJ Criminal Division - Evaluation of Corporate Compliance Programs (April 2019)
- DOJ Antitrust Division - Evaluation of Corporate Compliance Programs in Criminal Antitrust Investigations (July 2019)
- Fundamental Questions
 1. Is the corporation's compliance program well designed?
 2. Is the program being applied earnestly and in good faith? Is the program being implemented effectively?
 3. Does the corporation's compliance program work in practice?

Key Questions to Tailor your Compliance Antitrust Risk During Covid--19

Key Questions Regarding Compliance During COVID-19



Who has power over pricing?

Who are the key decision makers?



Are competitor collaborations necessary?

Who meets with competitors?



Who keeps abreast of new government protocols?

Questions?

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