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Department of Justice Announces Criminal Prosecution Protection for Voluntary Self-Disclosures Related to Mergers & Acquisitions

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The Department of Justice continues to incentivize companies to engage in conduct that proactively demonstrates a commitment to operate in compliance with applicable laws and regulations. Building on the implementation of policies in 2022 and earlier this year encouraging voluntary self-disclosure of misconduct and promoting the value of effective corporate compliance plans. Deputy Attorney General Lisa Monaco recently announced a new safe harbor policy for voluntary self-disclosures made in connection with mergers and acquisitions saving acquiring companies from successor liability.

Under the new Department-wide Mergers & Acquisitions (M&A) Safe Harbor Policy, buyers that promptly and voluntarily disclose criminal misconduct, fully cooperate with the related investigation, and engage in timely and appropriate remediation, restitution, and disgorgement will receive a presumption of declination of prosecution. While the Department of Justice cites previous isolated examples where it exercised enforcement discretion related to voluntary disclosures of criminal activity related to mergers and acquisitions, this new Safe Harbor is the first Department-wide policy establishing protection for companies who voluntarily self-disclose misconduct identified related to an acquisition.

Under this new Safe Harbor, discovered misconduct must be disclosed within six months of the acquisition closing date and must be fully remediated within one year from the closing date. Recognizing that acquisitions vary in size and complexity, these stated timeframes are subject to a reasonableness analysis that allows for prosecutors to extend these deadlines. The new M&A Safe Harbor Policy also clarifies that the presence of aggravating factors at the acquired company will not impact its ability to receive a declination of prosecution. In addition, absent aggravating factors, the acquired company also will qualify for voluntary self-disclosure benefits, including potential declination of prosecution. Finally, the M&A Safe Harbor Policy provides assurance that self-disclosed misconduct will not affect any recidivist analysis for the acquired company at the time of disclosure or in the future.

This new Policy again clearly emphasizes the Department of Justice's focus on promoting effective corporate compliance programs that are designed to identify and remediate misconduct in a timely manner, including compliance-related due diligence in mergers and acquisitions. Deputy Attorney General Monaco expressly states that the Department of Justice is placing "an enhanced premium on timely compliance-related due diligence and integration. Compliance must have a prominent seat at the table if an acquiring company wishes to effectively de-risk a transaction. By contrast, if your company does not perform effective due diligence or self-disclose misconduct at an acquired entity, it will be subject to full successor liability for that misconduct under the law."

The clear takeaways for companies involved in mergers and acquisitions are that the Department of Justice continues to place a premium on thorough compliance due diligence, investing in strong compliance programs, thoughtful integration of targets, and timely disclosure and remediation of misconduct. This new policy builds on the Department of Justice's recent Corporate Enforcement and Voluntary Self-Disclosure Policy, which "recognizes the potential benefits of corporate mergers and acquisitions, particularly when the acquiring entity

has a robust compliance program in place and implements that program as quickly as practicable at the merged or acquired entity."

We recommend buyers ensure rigorous compliance-related due diligence during the pre-closing period, integrate targets quickly into buyer compliance programs, and undertake additional efforts to identify compliance issues post-closing, given the six-month reporting window.

Should you have any questions about this topic, please reach out to [Ty Kelly](#), [Noah Kressler](#), [Robert Anthony Wells](#), or any member of Baker Donelson's [Health Law](#) or [Government Enforcement and Investigations Teams](#).