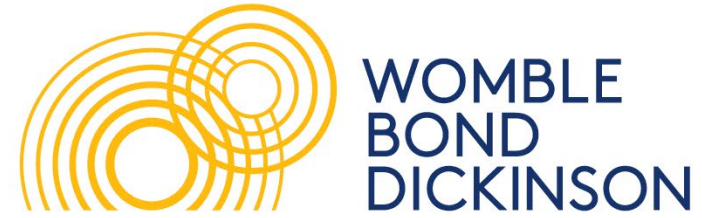


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ACC Charlotte September 4, 2024

Today's CLE Topic: Lessons from Boeing

Presented by Sarah Motley Stone and Erin K. Taylor





LESSONS FROM BOEING

NAVIGATING DOJ INITIATIVES & AVOIDING GOVERNMENT PITFALLS

TODAY'S PRESENTATION

WHAT IT IS...

- An overview of the new DOJ Whistleblower Pilot Program
- A brief review of the Boeing case as it relates to corporate compliance programs
- A discussion on how you can revamp your corporate compliance program

WHAT IT IS NOT...

- A discussion on whether Boeing received a sweet plea deal
- Everything



DOJ CORPORATE WHISTLEBLOWER AWARDS PILOT PROGRAM (3 Years)

BEGAN ON AUGUST 1, 2024, ALTHOUGH SOME JURISDICTIONS IMPLEMENTED THEIR OWN PILOT PROGRAMS EARLIER THIS YEAR.

DOJ'S NEW INITIATIVE TO CRACK DOWN ON CORPORATE CRIME.

PURPOSE OF THE PILOT PROGRAM

- **FILL IMPORTANT GAPS IN EXISTING WHISTLEBLOWER PROGRAMS**
 - EXISTING PROGRAMS INCLUDE
 - SEC
 - CFTC
 - FINCEN
 - FALSE CLAIMS ACT
 - **“SUPERCHARGE” DOJ’S CORPORATE INVESTIGATIONS AND PROSECUTIONS**

Release Number 8958-24

CFTC Awards Over \$4 Million to Insider Whistleblower

August 29, 2024

Washington, D.C. — The Commodity Futures Trading Commission today announced it awarded over \$4 million to an insider whistleblower who provided information that led the Division of Enforcement (DOE) to open an investigation into ongoing misconduct. The whistleblower shared knowledge about the complex products and transactions involved in the misconduct.

“The violations would have been difficult to detect without the knowledge of an insider,” said Director of Enforcement Ian McGinley. “The whistleblower’s information played a key role in putting a stop to the misconduct.”

award in 2014, the CFTC has granted whistleblower awards amounting to more than \$380 million. Those awards are associated with enforcement actions that have resulted in monetary sanctions exceeding \$3.2 billion. The CFTC issues awards related not only to the agency’s enforcement actions, but also in connection with actions brought by other domestic or foreign regulators if certain conditions are met.

WHERE ARE THE GAPS?

CRIMES INVOLVING FINANCIAL INSTITUTIONS AND THEIR EMPLOYEES

FOREIGN CORRUPTION INVOLVING PRIVATELY HELD COMPANIES AND OTHERS THAT ARE NOT ISSUERS OF U.S. SECURITIES

DOMESTIC CORRUPTION

HEALTH CARE FRAUD SCHEMES TARGETING PRIVATE INSURERS NOT SUBJECT TO *QUI TAM* RECOVERY UNDER THE FALSE CLAIMS ACT

WHISTLEBLOWER ELIGIBILITY

ORIGINAL

VOLUNTARY

**TRUTHFUL &
COMPLETE**

COOPERATION

**SUCCESSFUL CRIMINAL
OR CIVIL FORFEITURE
EXCEEDING \$1 MILLION**

120 DAY REPORTING PERIOD

- If a company receives a whistleblower's internal report and then self-discloses the allegations to DOJ's criminal division **within 120 days**, the company may still be eligible for the DOJ's VSD program.





737 MAX

737

MAX

Spirit of Renton

737 MAX

 **BOEING**

Relevant Considerations

4. The Fraud Section enters into this Agreement based on the individual facts and circumstances presented by this case and by the Company, including:

b. The Company did not receive voluntary disclosure credit pursuant to the Corporate Enforcement Policy in the Department of Justice Manual 9-47.120, or pursuant to the Sentencing Guidelines, because it did not timely and voluntarily disclose to the Fraud Section the offense conduct described in the Statement of Facts;

to the Sentencing Guidelines, because it did not timely and voluntarily disclose to the Fraud Section the offense conduct described in the Statement of Facts;

c. The Company received partial credit for its cooperation with the Fraud Section's investigation into the Company's above-described deception of the FAA AEG; the Company's cooperation ultimately included voluntarily and proactively identifying to the Fraud Section potentially significant documents and Company witnesses and voluntarily organizing voluminous evidence that the Company was obligated to produce; such cooperation, however, was delayed and only began after the first six months of the

in the attached Statement of Facts and conduct disclosed prior to the Agreement;

f. The Company's prior history of misconduct includes a criminal conviction from 1989 for an employee illegally obtaining confidential military planning documents,

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and a criminal non-prosecution agreement from 2006 for an employee engaging in procurement fraud. The Company's history also includes a civil FAA settlement agreement from 2015 related to safety and quality issues concerning the Company's Boeing Commercial Airplanes business unit;

g. After the offense conduct, the Company undertook the remedial efforts described above and enhanced and has committed to continuing to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the

g. After the offense conduct, the Company undertook the remedial efforts described above and enhanced and has committed to continuing to enhance its compliance program and internal controls, including ensuring that its compliance program satisfies the minimum elements set forth in Attachment C to this Agreement (Corporate Compliance Program);

procurement fraud. The Company's history also includes a civil FAA settlement agreement from 2015 related to safety and quality issues concerning the Company's

h. The Fraud Section determined that an independent compliance monitor was unnecessary based on the following factors, among others: (i) the misconduct was neither pervasive across the organization, nor undertaken by a large number of employees, nor facilitated by senior management; (ii) although two of the Company's 737 MAX Flight Technical Pilots deceived the FAA AEG about MCAS by way of misleading statements, half-truths, and omissions, others in the Company disclosed MCAS's expanded operational scope to different FAA personnel who were responsible for determining whether the 737 MAX met U.S. federal airworthiness standards; (iii) the state of the Company's remedial improvements to its compliance program and internal controls; and (iv) the Company's agreement to meet with and report to the Fraud Section as set forth in Attachment D to this Agreement (Enhanced Reporting Requirements);

WHAT WENT
WRONG?



BBC

Mafia boss claims Boeing supplier sent



an “unairworthy” or non-conforming aircraft to Boeing’s customers. Despite the acknowledgement of this risk, the Safety Risk Management assessments did not sufficiently consider measures to reduce out-of-sequence work. Boeing senior executives prioritized the

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an “unairworthy” or non-conforming aircraft to Boeing’s customers. Despite the acknowledgement of this risk, the Safety Risk Management assessments did not sufficiently consider measures to reduce out-of-sequence work. Boeing senior executives prioritized the movement of aircraft through Boeing’s factories over reducing out-of-sequence work to ensure production quality. Boeing did not implement sufficient policies or procedures to mitigate the risk posed by out-of-sequence work.

record initiates a process to ensure proper reinstallation of the part and record the individuals involved in removal, reinstallation, and reinspection. If a removal record was not completely

enhancements, in the Offices' view, Boeing failed to sufficiently extend its anti-fraud ethics and compliance program over its quality and manufacturing process before the end of the DPA term. As a result, the Department determined that Boeing's anti-fraud compliance program still has significant gaps.

enhancements, in the Offices' view, Boeing failed to sufficiently extend its anti-fraud ethics and compliance program over its quality and manufacturing process before the end of the DPA term. As a result, the Department determined that Boeing's anti-fraud compliance program still has significant gaps.

- Boeing failed to fully satisfy the requirement to implement "compliance policies and procedures designed to reduce the prospect of violations of U.S. fraud laws and the Company's compliance code," Attachment C ¶ 3, by failing to implement sufficient controls concerning the risk that Boeing's airworthiness certifications to the FAA could be incomplete, inaccurate, false and/or fraudulent;
- Boeing failed to fully satisfy the requirement to implement "compliance policies and procedures designed to reduce the prospect of violations of U.S. fraud laws and the Company's compliance code," Attachment C ¶ 3, by failing to implement sufficient controls concerning the risk of incomplete, inaccurate, false and/or fraudulent statements in Boeing's manufacturing records; and
- Boeing failed to fully satisfy the requirement to appropriately develop and adjust "compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of the Company," Attachment C ¶ 4, and to review and update such policies "as appropriate to ensure their continued effectiveness," Attachment C ¶ 5, in light of known manufacturing and quality risks,

FACTORS DOJ TOOK INTO CONSIDERATION

Boeing failed to satisfy the requirement to create and foster a culture of ethics and compliance with the law in its day-to-day operations by failing to mitigate known manufacturing and quality risks.

Boeing failed to design a compliance and ethics program that included sufficient anti-fraud oversight of Boeing's quality and safety processes.

FACTORS DOJ TOOK INTO CONSIDERATION

Boeing failed to implement sufficient controls concerning the risk of incomplete, inaccurate, false and/or fraudulent statements in their manufacturing records.

Boeing failed to fully satisfy the requirement to appropriately develop and adjust compliance policies and procedures on the basis of a **periodic risk assessment** addressing the individual circumstances of the company.

Evaluating
Your
Corporate
Compliance
Program

Not One Size
Fits All

10 Hallmarks of
a Successful
Program

10 Hallmarks of an Effective Compliance Program

1 – Strong Organizational Leadership and Ethical Culture

- *Boeing's downfall*
- Promote a culture that encourages ethical conduct and compliance.

2 – Effective Standards and Procedures

- Complies with applicable government regulations.
- Consistent with industry practice.
- Learn from past misconduct.

10 Hallmarks of
an Effective
Compliance
Program,
Continued...

**3 – ENSURE THAT YOUR
COMPLIANCE OFFICER HAS
APPROPRIATE OVERSIGHT,
AUTONOMY, AND RESOURCES**

**4 – ONGOING TRAINING AND
COMMUNICATION ON COMPLIANCE
MATTERS**

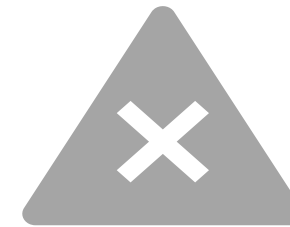
10 Hallmarks of an Effective Compliance Program, *Continued...*



5 – Internal Reporting Mechanisms

Remember the 120-day reporting period after a whistleblower puts company on notice of potential misconduct.

Create multiple, convenient, and well-publicized reporting mechanisms for employees and agents to seek guidance, raise compliance concerns, and report potential or actual misconduct.



6 – Incentives and Discipline to Promote and Enforce Compliance

Rewards may include bonuses

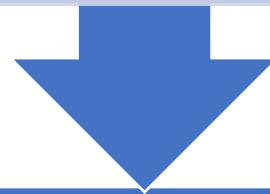
Disciplinary measures may include -

- Warnings, suspensions, and financial penalties
- Clawing back compensation from executives found to have contributed to misconduct

10 Hallmarks of an Effective Compliance Program, *continued...*

7 – Due Diligence and Oversight of Third-Party Relationships

DON'T BE AFRAID TO TERMINATE RELATIONSHIPS WITH THIRD PARTIES WHO REFUSE TO BEHAVE IN A COMPLIANT MANNER



8 – Investigation and Remediation of Misconduct

STOP

INVESTIGATE

REMEDiate

10 Hallmarks of
an Effective
Compliance
Program,
continued...

**9 – MONITORING AND
AUDITING OF PROGRAM
EFFECTIVENESS**

**10 – ONGOING RISK
ASSESSMENT TO MAINTAIN
PROGRAM EFFECTIVENESS**

Questions?



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THANK YOU!



WOMBLE
BOND
DICKINSON



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