

**MORRISON**  
**FOERSTER**

# **Fraud Enforcement Update**

# Biden Administration – Justice Department

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*Attorney General*  
Merrick Garland



*Deputy Attorney General*  
Lisa Monaco



*Director FBI*  
Christopher Wray



*Principal  
Associate  
Deputy  
Attorney  
General*  
John Carlin



*Associate Attorney  
General*  
Vanita Gupta



*Assistant Attorney  
General (Criminal)*  
Kenneth Polite



*Acting Assistant  
Attorney General  
(Civil)*  
Brian Boynton



*Chief of Staff,  
Deputy  
Attorney  
General*  
Anita Singh

# Poll Question

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- Would you expect the Department of Justice in the Biden Administration to prioritize:
  - A. National Security/Cyber Cases
  - B. White Collar Crime/Corporate Misconduct
  - C. Civil Rights Matters
  - D. All of the Above

# Biden Administration – Key Takeaways

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## INCREASED REGULATION AND ENFORCEMENT

- More resources for enforcement
- Renewed focus on large financial institutions and other corporate frauds
- Enforcement as tool to improve compliance: “better compliance through enforcement”
- Continued emphasis on effective corporate compliance programs

## MORE PREDICTABLE

- Return to Obama Administration policies, procedures, and priorities
- Policy driven
- Regulatory actions not considered a zero-sum game

# Justice Department Guidance

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## RENEWED FOCUS ON CORPORATE MALFEASANCE

- DAG & PADAG Announcements - Culture of Compliance
- Surging resources to identify corporate misconduct
- Creation of a DAG-led Corporate Crime Advisory Group

## COMPANY'S HISTORY OF MISCONDUCT IMPACTS DOJ DECISION- MAKING

- All prior domestic or foreign criminal, civil or regulatory enforcement
- All actions against company's parent, divisions, affiliates, subsidiaries and other entities

## PREVENT MISCONDUCT

- Set forth clear expectations
- New guidance on corporate monitors



# White Collar Enforcement Trends

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- White collar criminal enforcement sharply rebounding after being down; DOJ to “redouble” its commitment to white-collar crime enforcement
- DOJ collected more than \$5.6 billion in False Claims Act settlements and judgments in fiscal year 2021 – the second-largest in FCA history
- Increased focus on corporate compliance programs; DOJ to “surge” resources and focus on incentivizing corporate compliance and scrutinizing corporate recidivism
- Increase in corporate compliance monitors
- DOJ created a Corporate Crime Advisory Group to bring together all relevant components to review Department’s approach to prosecuting corporate fraud

# Predictions Under Biden Administration



DOJ

DOJ will “redouble” commitment and “surge resources” to corporate enforcement. This will include a renewed focus on investigating and prosecuting large financial institutions and other corporate frauds. Additional focus on the use of data analytics by DOJ and corporations. Expect DOJ to focus on securities/commodities, health care, government procurement, and pandemic funds.



SEC

Public companies will face more scrutiny, particularly regarding pandemic-related disclosures, perceived earnings management (i.e. transactions or adjustments that appear to be taken to meet financial guidance), and risk disclosures:

- Insider trading enforcement will likely increase;
- Heightened enforcement against financial institutions; and
- Delegated authority to more officers to issue Formal Orders of Investigation to expedite processes.



CFTC

The CFTC will focus on environmental, social and corporate governance (“ESG”) issues. For example, watch for futures and swaps trading facilities to offer more ESG-related products. With respect to enforcement, the CFTC will continue to take an aggressive approach towards perceived wrongdoing and market manipulation.

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# **Securities and Commodities Enforcement**



# Key Securities/Commodities Statutes

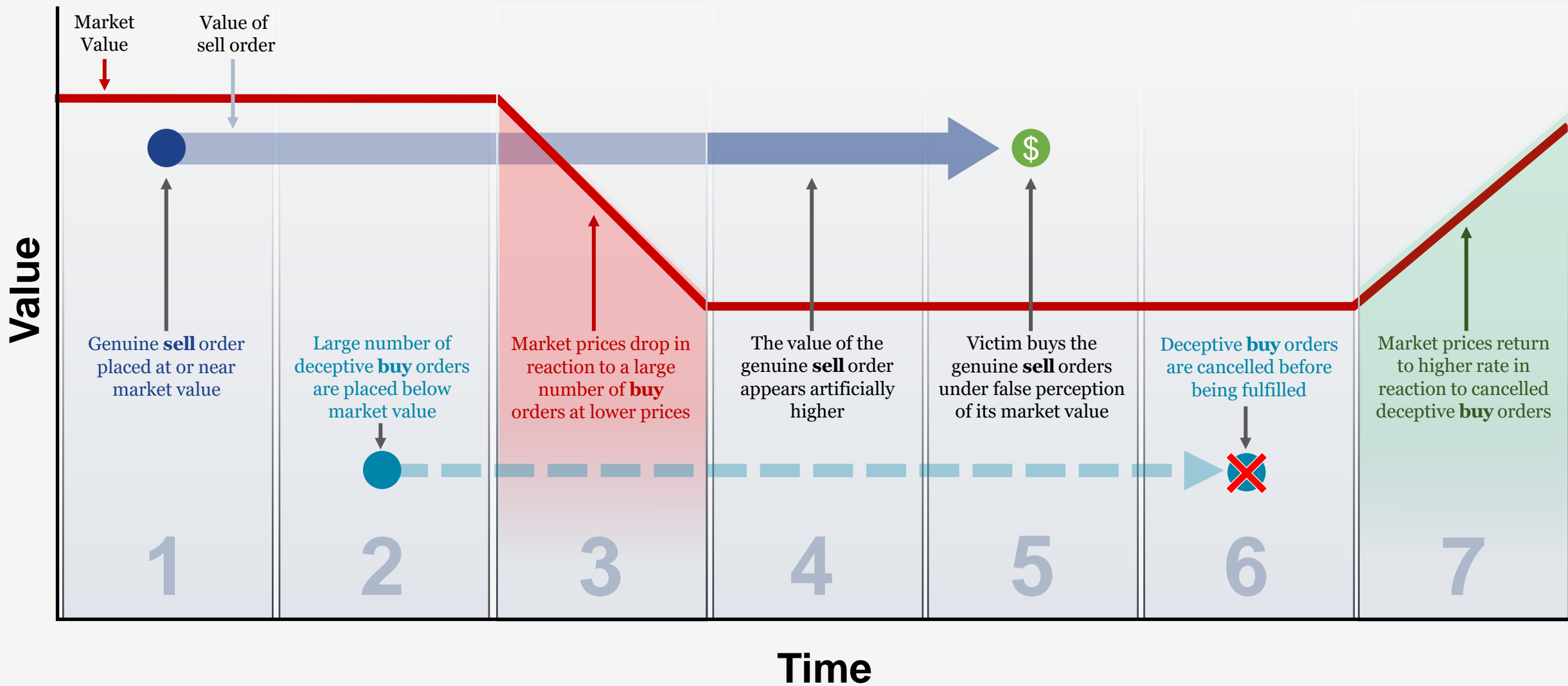
Name	Statute	Penalties
<b>Wire Fraud</b>	18 USC § 1343	Imprisonment for not more than 20 years and a fine of not more than \$250,000 (not more than \$500,000 for organizations), or fine of not more than \$1 million and imprisonment for not more than 30 years if the victim is a financial institution or the offense was committed in relation to a natural disaster
<b>Securities and Commodities Fraud</b>	18 USC § 1348	Imprisonment for not more than 25 years and a fine of not more than \$250,000 (not more than \$500,000 for organizations)
<b>Conspiracy</b>	18 USC § 1349	Subject to the same penalties as those prescribed for the offense
<b>Insider Trading</b>	17 CFR § 240.10b-5	Imprisonment for not more than 20 years and a fine of \$5,000,000 for an individual and \$25,000,000 for a corporation
<b>Spoofing</b>	7 USC § 6c(a)(5)(C) and 13(a)(2)	Imprisonment for not more than 10 years and a fine of \$1 million or three times the monetary gain, whichever is greater

# Key Securities Statutes Cont.

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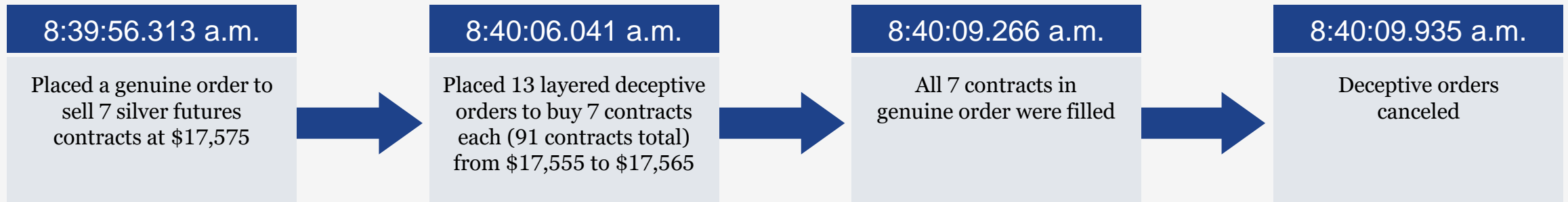
Name	Statute	Penalties
<b>False Entries in a Public Company's Books, Records, and Accounts</b>	17 CFR § 240.13B2-1; 15 USC § 78m(b)(5), 78m(b)(2), and 78ff(a)	Imprisonment for not more than 20 years and a fine of not more than \$5,000,000
<b>False Statements to Accountants</b>	17 CFR 240.13b2-2; 15 USC § 78ff(a)	Imprisonment for not more than 20 years and a fine of not more than \$5,000,000

# Spoofering

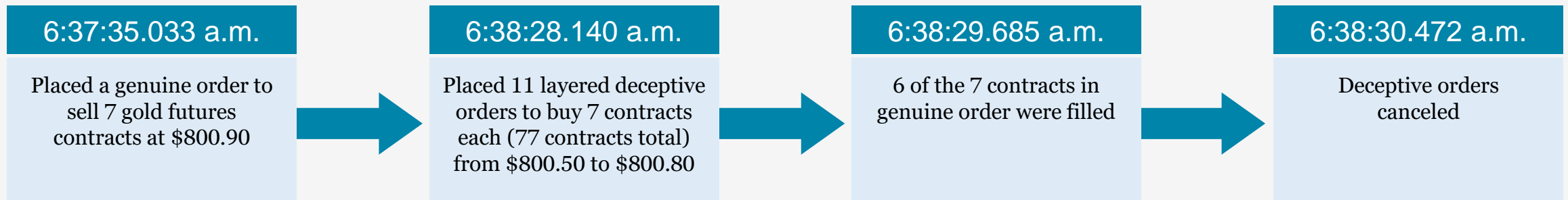


# JP Morgan Spoofing Allegations

- Placed tens of thousands of orders to buy and sell precious metals futures contracts with the intent to cancel those orders before execution



- Placed thousands of orders to buy and sell U.S. Treasury Products with the intent to cancel those orders before execution



# Spoofting and Wire Fraud

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- Traditionally spoofing charges were brought pursuant to the CEA and the Commodities Fraud statute (18 U.S.C. § 1348)
- The SOL for the CEA is 5 years, while the SOL under the Commodities Fraud statute is 6 years
- In addition to these provisions, DOJ has begun charging spoofing violations under the Wire Fraud statute (18 U.S.C. § 1343), and more specifically, as Wire Fraud Affecting a Financial Institution, which expands the SOL from 5 to 10 years
- The U.S. District Court for the Northern District of Illinois has twice approved of DOJ's Wire Fraud theory of prosecution, and over the past year, four defendants have been convicted of these counts at trial

# **Government Procurement Fraud Enforcement**

# Procurement Fraud Enforcement

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**Overview:** Procurement fraud enforcement covers matters that involve conduct at any stage of the government contracting process



## Civil vs. Criminal Cases

- Dual analyses; coordination policy

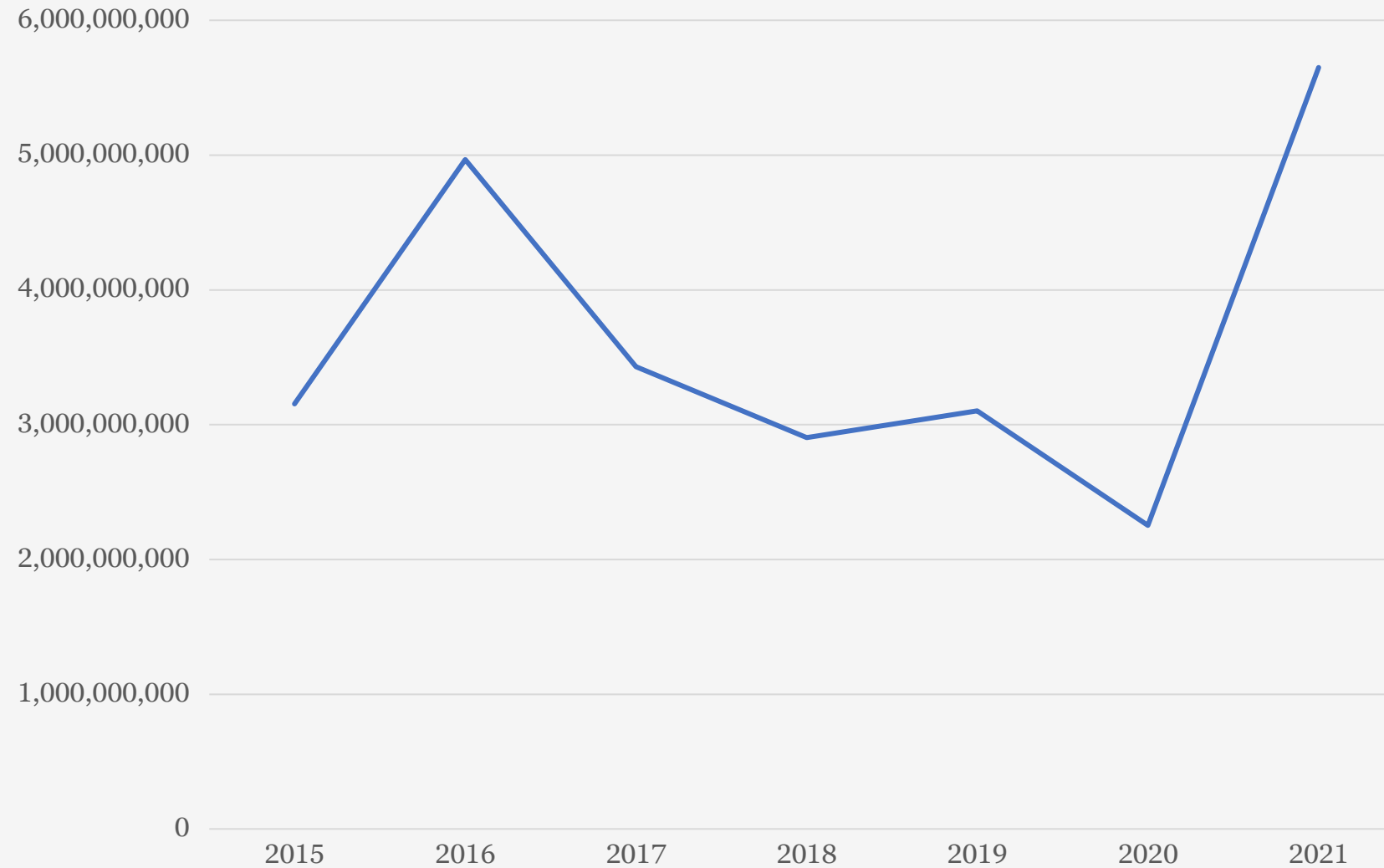
## False Claims Act (FCA)

- Government's primary civil tool to redress false claims for federal funds and property involving a multitude of other government operations and functions
  - **Qui Tam:** (Whistleblowers / Relators) + Rewards
  - **Penalties:** Treble damages + fines linked to inflation



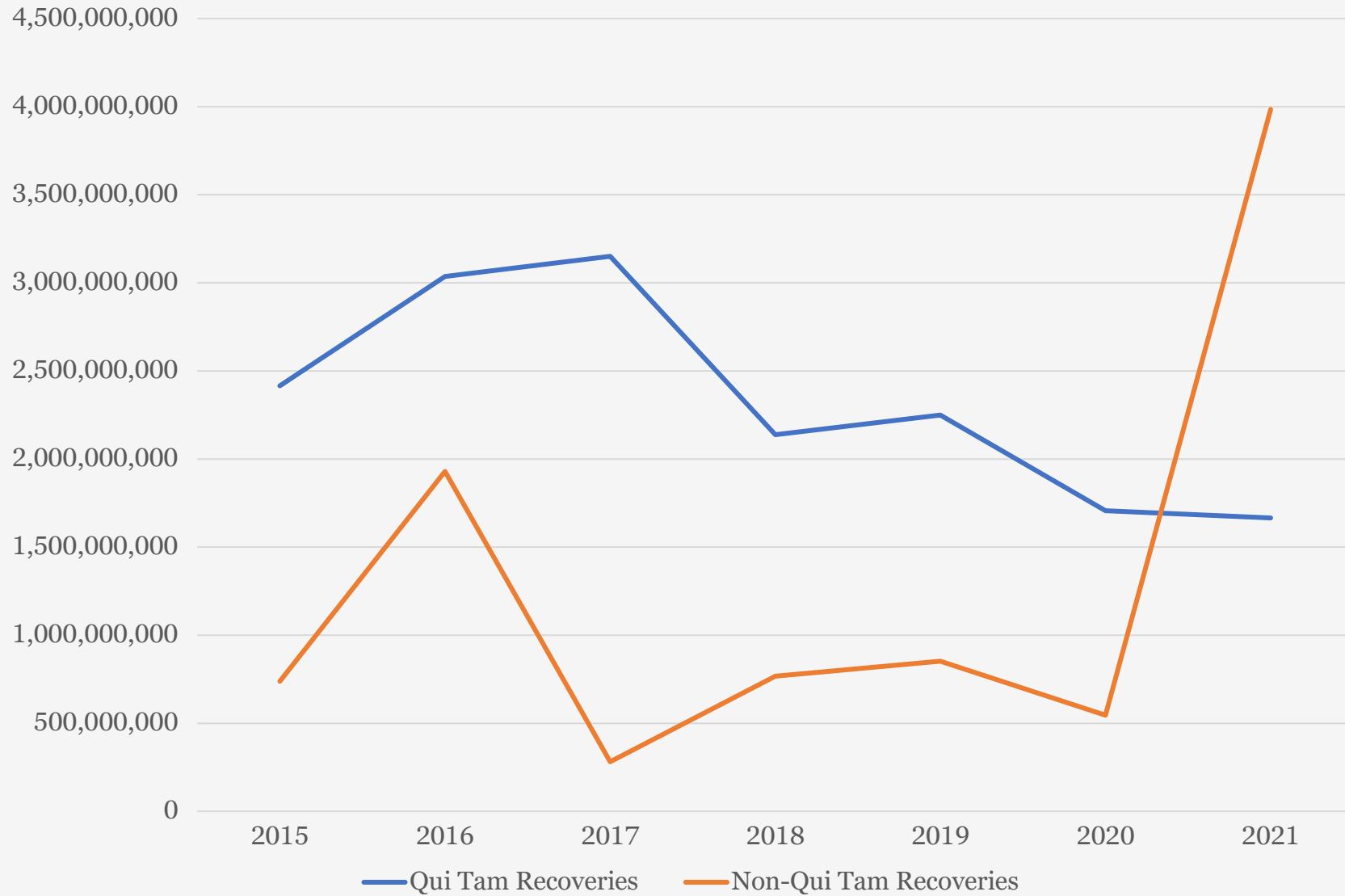
# Procurement Fraud by the Numbers

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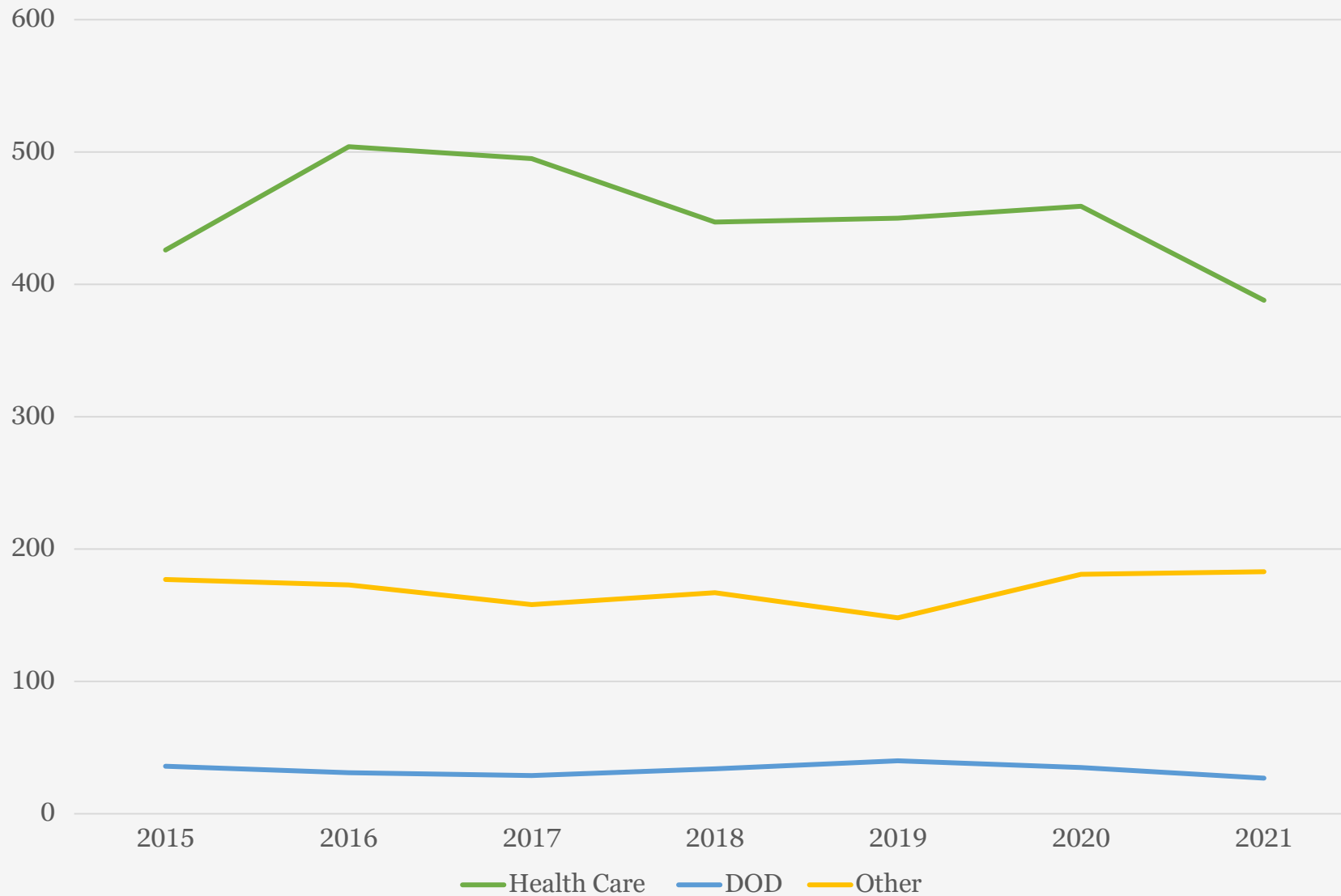




# Qui Tam vs. Non-Qui Tam Recoveries



# New Qui Tam Filings



# Common Procurement Fraud

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## Bribery

- Quid Pro Quo
- Stream of Benefits



## False Billing

- False Invoices
- Time Card Fraud



## Bid Rigging

- Market Manipulation
- Corrupt Officials &/or Companies

# Key Procurement Fraud Statutes

Name	Statute	Penalties
<b>False Claims Act</b>	31 U.S.C. § 3729–3733	A civil penalty of between \$5,000 and \$10,000 for each false claim (adjusted for inflation) and treble the amount of the government’s damages. Where a person who has violated the FCA reports the violation to the government under certain conditions, the FCA provides that the person shall be liable for not less than double damages
<b>Mail &amp; Wire Fraud</b>	18 USC § 1341 & 1343	Imprisonment for not more than 20 years and a fine of not more than \$250,000 (not more than \$500,000 for organizations), or fine of not more than \$1 million and imprisonment for not more than 30 years if the victim is a financial institution or the offense was committed in relation to a natural disaster
<b>Conspiracy to Defraud the Government with Respect to Claims</b>	18 U.S.C. § 286	Fine or imprisonment not more than ten years, or both

# Key Procurement Fraud Statutes

Name	Statute	Penalties
<b>Conspiracy to Defraud the United States</b>	18 U.S.C. § 371	Fine or imprisonment not more than five years, or both (for each conspirator). If the offense is a misdemeanor, the punishment for the conspiracy shall not exceed the max punishment for such misdemeanor
<b>Major Fraud Against the United States</b>	18 U.S.C. § 1031	Fine not more than \$1,000,000, or imprisonment not more than 10 years, or both (if multiple counts, no more than \$10,000,000)
<b>False Statements, Concealment</b>	18 U.S.C. § 1001	Fine and/or imprisonment not more than 5 years or, for certain offenses (including terrorism), imprisoned not more than 8 years
<b>Protection of Government Processes – Tampering with Victims, Witnesses, or Informants</b>	18 U.S.C. § 1512	Depends on the specific conduct, but common penalties include fines, and imprisonment not more than 20-30 years
<b>Procurement Integrity Act</b>	18 U.S.C. § 371	Includes potential criminal and civil penalties, as well as administrative actions

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# Case Studies

# Recent Cases – Securities & Commodities

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# JP Morgan Information



## Charges:

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	Criminal No.
v.	VIOLATIONS:
JPMORGAN CHASE & CO.	18 U.S.C. § 1343 (Wire Fraud)

### INFORMATION

The United States of America charges:

#### COUNT ONE (Wire Fraud)

1. From approximately March 2008 until August 2016 (“Precious Metals Relevant Period”), in the District of Connecticut, and elsewhere, the defendant, JPMORGAN CHASE & CO., knowingly and with the intent to defraud, having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted certain writings, signs, signals, pictures, and sounds by means of wire communication in interstate and foreign commerce for the purpose of executing the scheme and artifice to defraud.

2. During the Precious Metals Relevant Period, JPMORGAN CHASE & CO., together with its subsidiaries including JPMorgan Chase Bank, N.A. (“JPMC”) and its affiliates, operated a commodities trading business, which included the trading of gold, silver, platinum, and palladium (“precious metals”) futures contracts and options, through its Global Commodities Group with precious metals traders that worked in offices in New York, Singapore, and London.

-1-

- One Count of Wire Fraud for “Spoofing” on the Precious Metals Desk
- One Count of Wire Fraud for “Spoofing” on the U.S. Treasuries Desk



# JP Morgan \$920M Resolution



## Resolution Terms:

DPA / **\$920 million**

- Required JPMorgan to self-report violations of the federal anti-fraud laws and cooperate in any future criminal investigations
- Reflects the nature and seriousness of the offenses and represents a milestone in the DOJ's ongoing efforts to ensure the integrity of public markets critical to our financial system

## JPMorgan's Efforts:

Received credit for its cooperation with the investigation and for the remedial measures taken including:

- Suspending and ultimately terminating individuals involved in the offense conduct
- Adopting heightened internal controls
- Substantially increasing the resources devoted to compliance

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

CRIMINAL NO.

JPMORGAN CHASE & CO.

### DEFERRED PROSECUTION AGREEMENT

Defendant JPMorgan Chase & Co. (the "Company"), pursuant to authority granted by the Company's Board of Directors reflected in Attachment B, and the United States Department of Justice, Criminal Division, Fraud Section, and the United States Attorney's Office for the District of Connecticut (collectively, the "Fraud Section and the Office"), enter into this deferred prosecution agreement (the "Agreement"). The Company's subsidiaries, JPMorgan Chase Bank, N.A. ("JPMC"), and J.P. Morgan Securities LLC ("JPMS") (together, the "Related Entities"), also agree, pursuant to the authority granted by their respective Boards of Directors, also reflected in Attachment B, to certain terms and obligations of the Agreement as described below. The terms and conditions of this Agreement are as follows:

### Criminal Information and Acceptance of Responsibility

1. The Company acknowledges and agrees that the Fraud Section and the Office will file the attached two-count criminal Information in the United States District Court for the District of Connecticut charging the Company with two counts of wire fraud, in violation of Title 18, United States Code, Section 1343. In so doing, the Company: (a) knowingly waives any right it may have to indictment on these charges, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives any objection with respect

# JP Morgan Individuals Indictment



## Charges:

- One count of Racketeer Influenced and Corrupt Organizations (RICO) Act conspiracy
- One count of conspiracy to commit wire fraud affecting a financial institution, bank fraud, commodities fraud, price manipulation, and spoofing
- One count of bank fraud and one count of wire fraud affecting a financial institution
- Trial set to begin July 5, 2022

Case: 1:19-cr-00669 Document #: 52 Filed: 11/14/19 Page 1 of 48 PageID #:204

**FILED**  
NOV 14 2019  
THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JUDGE CHANG  
MAGISTRATE JUDGE CUMMINGS

UNITED STATES OF AMERICA )  
v. ) No. 19 CR 669 (EEC)  
GREGG SMITH, )  
MICHAEL NOWAK, ) Violations: Title 7, United States Code,  
JEFFREY RUFFO, and ) Sections 6c(a)(5)(C) and 13(a)(2);  
CHRISTOPHER JORDAN, ) Title 18, United States Code, Sections  
Defendants. ) 371, 1343, 1344(1), 1348(1), and 1962(d)

**SUPERSEDING INDICTMENT**

The SPECIAL MAY 2019 GRAND JURY charges:

**COUNT ONE**  
(Conspiracy to Conduct or Participate in an Enterprise Engaged in a Pattern of Racketeering Activity)

At all times relevant to this Superseding Indictment, unless otherwise noted:

**Market Background**

1. Precious metals were rare, naturally occurring metals of high economic value. They included gold, silver, platinum, and palladium. These precious metals were commodities that had both investment and industrial uses ranging from jewelry to computer memory chips to catalytic converters in engines.

2. One way to trade precious metals was by buying and selling "futures contracts." A futures contract was an agreement to buy or sell a particular product (such as gold, for example) at a fixed price but to be delivered and paid for later. In other words, the buyer and seller agreed at the time they entered into the contract on a price for a product to be delivered (by the seller) in exchange for money (to be

# Recent Cases: Health Care

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# Sutter Health



## Charges:

- Kathy Ormsby filed a whistleblower FCA *qui tam* case against her former employer Sutter Health, a nonprofit, California-based public benefit health system. The United States subsequently intervened

## Allegations:

- Sutter Health submitted false diagnosis codes for certain patients with Medicare Advantage Plans causing inflated payments to be made to Sutter
- Once Sutter became aware, failed to take corrective action

Case 3:15-cv-01062-JD Document 41 Filed 03/04/19 Page 1 of 54

1 JOSEPH H. HUNT  
Assistant Attorney General

2 DAVID L. ANDERSON (CABN 149604)  
United States Attorney

3 SARA WINSLOW (DCBN 457643)  
Chief, Civil Division

4 KIMBERLY FRIDAY (MABN 660544)  
Assistant United States Attorney

5

6 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
7 Telephone: (415) 436-7102  
Facsimile: (415) 436-6927  
8 kimberly.friday@usdoj.gov

9 MICHAEL D. GRANSTON  
PATRICIA L. HANOWER  
10 A. THOMAS MORRIS  
J. JENNIFER KOH  
11 OLGA YEVTUKHOVA  
Attorneys, Civil Division  
12 United States Department of Justice

13 P.O. Box 261, Ben Franklin Station  
Washington, D.C. 20044  
14 Telephone: (202) 307-1026

15 Attorneys for the United States of America

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19

20 UNITED STATES OF AMERICA *ex rel.* ) CASE NO. C 15-01062 JD  
KATHY ORMSBY, )  
21 Plaintiff, )  
22 v. ) UNITED STATES' COMPLAINT-IN-  
23 SUTTER HEALTH and PALO ALTO ) INTERVENTION  
MEDICAL FOUNDATION, )  
24 Defendants. )  
25

26

27

28 UNITED STATES' COMPLAINT-IN-INTERVENTION  
CV 15-01062-JD 1

# Sutter Health \$90M Resolution



## Resolution Terms:

### Settlement Agreement / **\$90 million**

- 5 Year Corporate Integrity Agreement (CIA) with HHS-OIG that requires Sutter Health to:
  - Implement a centralized risk assessment program as part of its compliance program, and
  - Hire an Independent Review Organization to annually review a sample of patients' medical records and associated diagnoses data

### Scrutiny by Government Regulators

- Misconduct among industry for Medicare coding: Investigations involving Kaiser, CVS & others
- History of Noncompliance: \$575 million settlement with California on allegations the health system overcharged patients

#### SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-LIIS) of the Department of Health and Human Services (HHS) (collectively, the "United States"); Sutter Health (Sutter), a California nonprofit public benefit corporation; Sutter Bay Medical Foundation (SBMF), a California nonprofit public benefit corporation dba Palo Alto Medical Foundation (PAMF), Sutter East Bay Medical Foundation (SEBMF), and Sutter Pacific Medical Foundation (SPMF)<sup>1</sup>; Sutter Valley Medical Foundation (SVMF), a California nonprofit public benefit corporation dba Sutter Gould Medical Foundation (SGMF) and Sutter Medical Foundation (SMF)<sup>2</sup> (SBMF and SVMF will be referred to as the "Affiliates"); and Kathy Ormsby (Relator) (hereafter collectively referred to as the "Parties"), through their authorized representatives.

#### RECITALS

A. Under the Medicare Advantage program, Medicare beneficiaries who are entitled to benefits under Part A and enrolled under Part B may enroll in Medicare Advantage Plans (MA Plans) that are owned and operated by private Medicare Advantage Organizations (MAOs). The Centers for Medicare & Medicaid Services (CMS) pays MAOs a capitated amount for each beneficiary to provide or cover the cost

<sup>1</sup> SBMF also does business as PAMF Research Institute, PAMF Surgery Center Mountain View, PAMF Surgery Center Fremont, PAMF Surgery Center Palo Alto, PAMF Surgery Center San Carlos, PAMF Surgery Center San Jose, PAMF Surgery Center Los Altos, and Sutter Walk-In Care. SBMF, as defined in this Agreement, does not include other entities of SBMF other than SPMF, SEBMF and PAMF.

<sup>2</sup> SVMF also does business as Sutter Walk-In Care, Briggsmore Specialty Center, Sutter Medical Foundation Surgery and Endoscopy Center, Sutter-17k Cancer Surgery Center, Stockton Surgery Center, and Sutter North Hrowsville Family Practice Center. SVMF, as defined in this Agreement, does not include other entities of SVMF other than SMF and SGMF.

# Recent Cases: Procurement Fraud

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# Balfour Beatty Communities



Case 1:21-cr-00742-EGS Document 1 Filed 12/21/21 Page 1 of 5

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	CRIMINAL NO.
v.	)	VIOLATION: 18 U.S.C. § 1031(a)(1)
BALFOUR BEATTY COMMUNITIES,	)	(Major Fraud against the United States)
LLC	)	
Defendant.	)	UNDER SEAL

## INFORMATION

The United States of America hereby charges that:

### Background

At all times material to this Information:

#### *Relevant Individuals and Entities*

1. Balfour Beatty Communities LLC ("BBC") was a diversified real estate services company headquartered in Malvern, Pennsylvania. BBC was a division of a publicly traded multinational real estate and construction company based in the United Kingdom, for which securities were traded as American Depositary Receipts in the United States. BBC was one of the largest for-profit providers of military family housing in the United States.

#### BBC's Operation of Military Housing Communities

2. Beginning in approximately 2003, the U.S. Department of Defense engaged a BBC predecessor entity to develop and manage military housing communities at 21 U.S. Air Force, 16 U.S. Army, and 18 U.S. Navy installations across the United States. BBC entered into agreements with branches of the U.S. Armed Forces to own, develop, and manage military housing communities, including at Lackland AFB, Travis AFB, Vandenberg AFB, Tinker AFB, Fairchild

## Charges:

- One count of Major Fraud against the United States

## Allegations:

- BBC made false and fraudulent representations to obtain Performance Incentive Fees from the military in the amount of \$18,700,000

# Balfour Beatty \$65M Resolution



Case 1:21-cr-00742-EGS Document 5 Filed 12/22/21 Page 1 of 24

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA )  
 )  
 v. )  
 )  
 BALFOUR BEATTY COMMUNITIES, )  
 LLC )  
 )  
 Defendant. )

CRIMINAL NO. 21-CR-742 (EGS)

VIOLATION: 18 U.S.C. § 1031(a)(1)  
(Major Fraud against the United States)

**FILED**  
DEC 22 2021

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

## PLEA AGREEMENT

The United States of America, by and through the Department of Justice, Criminal Division, Fraud Section (the "Fraud Section"), and the Defendant, Balfour Beatty Communities, LLC ("BBC" or "Defendant"), by and through its undersigned attorneys, and through its authorized representative, pursuant to authority granted by the Defendant's Operating Agreement, hereby submit and enter into this plea agreement (the "Agreement"), pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure. The terms and conditions of this Agreement are as follows:

### Term of the Defendant's Obligations Under the Agreement

1. Except as otherwise provided in Paragraph 11 below in connection with the Defendant's cooperation obligations, the Defendant's obligations under the Agreement shall last and be effective for a period beginning on the date on which the Information is filed and ending three years from the later of the date on which the Information is filed or the date on which the independent compliance monitor (the "Monitor") is retained by the Company, as described in Paragraphs 24-26 below (the "Term"). The Defendant agrees, however, that, in the event the Fraud Section determines, in its sole discretion, that the Defendant has failed specifically to perform or

## Resolution Terms:

### Guilty Plea / **\$65 million**

- Pled guilty to one count of Major Fraud against the US and agreed to pay over \$33.6 million in criminal fines, over \$31.8 million in restitution and hire independent compliance monitor for a period of three years
- Entered into False Claims Act settlement to resolve civil liability for \$35.2 million credited against amounts owed under criminal plea

## Why Not a DPA?

### Number of factors contributed to criminal resolution:

- Nature and seriousness of offense
- Pervasiveness of misconduct among employees and at multiple locations
- Compliance program and internal controls not fully implemented/tested to demonstrate that they would prevent/detect similar fraud in the future



# **DOJ Compliance Guidance**

# DOJ Compliance Guidance

1

Is the corporation's compliance program well designed?

2

Is the program being applied earnestly and in good faith? In other words, is the program adequately resourced and empowered to function effectively?

3

Does the corporation's compliance program work' in practice?



U.S. Department of Justice  
Criminal Division  
Evaluation of Corporate Compliance Programs  
(Updated June 2020)

## Introduction

The "Principles of Federal Prosecution of Business Organizations" in the Justice Manual describe specific factors that prosecutors should consider in conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements. JM 9-28.300. These factors include "the adequacy and effectiveness of the corporation's compliance program at the time of the offense, as well as at the time of a charging decision" and the corporation's remedial efforts "to implement an adequate and effective corporate compliance program or to improve an existing one." JM 9-28.300 (citing JM 9-28.800 and JM 9-28.1000). Additionally, the United States Sentencing Guidelines advise that consideration be given to whether the corporation had in place at the time of the misconduct an effective compliance program for purposes of calculating the appropriate organizational criminal fine. See U.S.S.G. §§ 8B2.1, 8C2.5(f), and 8C2.8(11). Moreover, the memorandum entitled "Selection of Monitors in Criminal Division Matters" issued by Assistant Attorney General Brian Benczkowski (hereafter, the "Benczkowski Memo") instructs prosecutors to consider, at the time of the resolution, "whether the corporation has made significant investments in, and improvements to, its corporate compliance program and internal controls systems" and "whether remedial improvements to the compliance program and internal controls have been tested to demonstrate that they would prevent or detect similar misconduct in the future" to determine whether a monitor is appropriate.

This document is meant to assist prosecutors in making informed decisions as to whether, and to what extent, the corporation's compliance program was effective at the time of the offense, and is effective at the time of a charging decision or resolution, for purposes of determining the appropriate (1) form of any resolution or prosecution; (2) monetary penalty, if any; and (3) compliance obligations contained in any corporate criminal resolution (e.g., monitorship or reporting obligations).

Because a corporate compliance program must be evaluated in the specific context of a criminal investigation, the Criminal Division does not use any rigid formula to assess the effectiveness of corporate compliance programs. We recognize that each company's risk profile and solutions to reduce its risks warrant particularized evaluation. Accordingly, we make a reasonable, individualized determination in each case that considers various factors including, but not limited to, the company's size, industry, geographic footprint, regulatory landscape, and other factors, both internal and external to the company's operations, that might impact its compliance program. There are, however, common questions that we may ask in the course of making an individualized determination. As the Justice Manual notes, there are three "fundamental questions" a prosecutor should ask:

1

# DOJ Compliance Guidance

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1

## Is the corporation's compliance program well designed?

- Risk assessment
- Policies and procedures
- Training and communications
- Confidential reporting and investigations
- Third-party management
- Mergers and acquisitions

# DOJ Compliance Guidance

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2

## Does the compliance program work in practice?

- Continuous improvements, periodic testing, and review
- Investigation of misconduct
- Analysis and remediation of any underlying misconduct

# DOJ Compliance Guidance

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3

**Is the compliance program adequately resourced and empowered to function effectively?**

- Commitment by senior and middle management
- Autonomy and resources
- Incentives and disciplinary measures

# DOJ Compliance Guidance

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## 4

### **DAG Announcement**

- Prosecutors must consider full range of a Corporation's History of Misconduct when making charging decisions or resolving a matter
- Corporations must identify all individuals involved in or responsible for the misconduct at issue to receive Cooperation Credit
- DOJ committed to imposing corporate monitors where there is a need and a clear benefit

# Poll Question

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- In response to the current DOJ Administration, what should you recommend your corporation do to prevent or minimize corporate exposure?
  - A. Scrutinize any proposed mergers/acquisitions to examine the history of compliance of the companies in the proposed merger.
  - B. Terminate any employee who files an internal complaint.
  - C. Require all new employees to sign a Non-Disclosure Agreement to prevent them from disclosing any misconduct.
  - D. Compartmentalize any information reported to the DOJ to prevent them from talking to senior level executives that may have engaged in misconduct.

# DOJ Compliance Guidance – Key Takeaways

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## What should companies be doing to ensure their programs meet DOJ's expectations?

- Conduct a risk assessment to identify potential compliance gaps related to product lines, geographies, supply chains, etc.;
- If appropriate, use data analytics to proactively identify issues;
- Work with experienced counsel to benchmark compliance program against peers and regulatory expectations; and
- Continue to monitor DOJ announcements/actions as Corporate Crime Advisory Group rolls out recommendations.



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