

# The Usual Corporate Suspects

*Justice Department's Pledge of "No Tolerance" For Corporate Repeat Offenders Means 20 Major Corporations Receiving Leniency May Now Face Scrutiny from Prosecutors*



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The Justice Department is ramping up its efforts to fight corporate crime, and 20 major corporations may face additional scrutiny from federal prosecutors due to the department's new policies. All 20 are bound by DOJ leniency agreements, having faced federal criminal investigations in recent years and resolved these investigations by inking special agreements that allow the companies to avoid prosecution and a potential trial.

In a welcome about-face from years of neglect of corporate crime, the DOJ has pledged to make sure corporations that were permitted to end criminal investigations through leniency agreements abide by the terms of these agreements. The department refers to these leniency agreements deferred and non-prosecution agreements, or DPAs and NPAs. Now the DOJ says it will make the sure companies that avoided criminal prosecution in exchange for promising not to reoffend are actually keeping their promise.

"We will hold accountable any company that breaches the terms of its DPA or NPA," Deputy Attorney General Lisa Monaco [warned an audience](#) of white-collar defense lawyers in October. "[T]here will be serious consequences for violating their terms."

Public Citizen's list of companies found by DOJ leniency agreements includes some of the largest and most powerful companies in the world, including Walmart, Boeing, JPMorgan, Monsanto and Novartis (see Table 1).

**Table 1: Twenty Corporations Currently Bound by DOJ Leniency Agreements**

Corporation Bound by Agreement	Parent Corporation	Offense	Agreement Type	Agreement Date	Term (Years)	Expiration Date
Monsanto	Bayer	<a href="#">Hazardous waste violations</a>	DPA	11/21/2019	2	11/21/2021
Walmart	n/a	<a href="#">FCPA violations</a>	NPA	6/20/2019	3	6/20/2022
Merrill Lynch Commodities, Inc.	Bank of America	<a href="#">Fraud</a>	NPA	6/25/2019	3	6/25/2022
Microsoft (Hungarian subsidiary)	Microsoft	<a href="#">FCPA violations</a>	NPA	7/22/2019	3	7/22/2022
HSBC Private Bank (Suisse) SA	HSBC	<a href="#">Tax evasion</a>	DPA	12/10/2019	3	12/10/2022
Airbus	n/a	<a href="#">FCPA violations</a>	DPA	1/31/2020	3	1/31/2023
Wells Fargo	n/a	<a href="#">Fraud</a>	DPA	2/26/2020	3	2/26/2023
Sandoz	Novartis	<a href="#">Antitrust violations</a>	DPA	3/2/2020	3	3/2/2023
Chipotle Mexican Grill	n/a	<a href="#">Food safety violations</a>	DPA	4/21/2020	3	4/21/2023
Novartis Hellas S.A.C.I.	Novartis	<a href="#">FCPA violations</a>	DPA	6/25/2020	3	6/25/2023
Herbalife Nutrition	n/a	<a href="#">FCPA violations</a>	DPA	9/1/2020	3	9/1/2023
JPMorgan Chase	n/a	<a href="#">Fraud</a>	DPA	9/25/2020	3	9/25/2023
Goldman Sachs Group	n/a	<a href="#">FCPA violations</a>	DPA	10/22/2020	3	10/22/2023
Beam Suntory	Suntory Holdings	<a href="#">FCPA violations</a>	DPA	10/23/2020	3	10/23/2023
TicketMaster	Live Nation Entertainment	<a href="#">Fraud, cybercrime</a>	DPA	12/29/2020	3	12/29/2023
Boeing	n/a	<a href="#">Fraud</a>	DPA	1/7/2021	3	1/7/2024
Deutsche Bank	n/a	<a href="#">FCPA violations</a>	DPA	1/8/2021	3	1/8/2024
United Airlines	United Airlines Holdings	<a href="#">Fraud</a>	NPA	2/25/2021	3	2/25/2024
FirstEnergy	n/a	<a href="#">Fraud</a>	DPA	7/22/2021	3	7/22/2024
Credit Suisse	n/a	<a href="#">Fraud</a>	DPA	10/19/2021	3	10/19/2024

Data Source: [Duke/University of Virginia Corporate Prosecution Registry](#)

Two corporations that are bound by leniency agreements with federal prosecutors [have already been notified](#) that the DOJ has found them to be in breach of their agreements. The most significant consequence of breaching these agreements is criminal prosecution.

The most significant consequence of breaching these agreements is criminal prosecution. In the past this is something the DOJ rarely has done. But the times may well be changing.

A 2019 [Public Citizen report](#) found only seven occasions – about 1% of the time – when the department held a corporation accountable for breaking its promise not to violate the law. In only three instances (out of more than 500) agreements did the DOJ prosecute companies for violating a leniency agreement. Monaco's speech suggests an overdue shift away from this hands-off approach – and the nearly unprecedented breach notifications to [Ericsson and NatWest Group](#) show the DOJ is backing up its words with actions.

Another component of the DOJ's new corporate crime-fighting effort is the instruction to prosecutors to consider a company's full history of past violations when determining the severity of penalties a corporate offender should face. If previous penalties proved insufficient to deter further lawbreaking, then penalties for subsequent offenses should significantly increase. Crime shouldn't pay – increasing penalties can make sure it doesn't.

Monaco's corporate crime enforcement [policy memo](#) elaborates:

A corporation's record of past misconduct – including violations of criminal laws, civil laws, or regulatory rules – may be indicative of whether the company lacks the appropriate internal controls and corporate culture to disincentivize criminal activity, and whether any proposed remediation or compliance programs, if implemented, will succeed. Prosecutors must therefore take a holistic approach when considering a company's characteristics, including its history of corporate misconduct, without limiting their consideration to whether past misconduct is similar to the instant offense.

Most of the corporations listed in this report faced federal criminal investigations prior to the investigations that resulted in their current leniency agreements, and all faced civil enforcement actions from federal regulatory agencies such as the Federal Trade Commission, Environmental Protection Agency, and the Securities and Exchange Commission, according to Public Citizen's analysis of data obtained from Good Jobs First's [Violation Tracker](#) (see Table 2).

**Table 2: Tally of Prior Federal Enforcement Actions Against 20 Corporations Currently Bound by DOJ Leniency Agreements**

Corporation Bound by Agreement	Parent Corporation	Prior Federal Enforcement Actions Associated With Parent
<b>Monsanto</b>	Bayer	DOJ criminal: 1 EPA: 6 Labor <sup>1</sup> : 3 SEC: 2 Other <sup>2</sup> : 3
<b>Walmart</b>	n/a	DOJ civil: 7 DOJ criminal: 1 EPA: 25 Labor: 292 Other: 5
<b>Merrill Lynch Commodities, Inc.</b>	Bank of America	DOJ civil: 7 DOJ criminal: 1 Consumer <sup>3</sup> : 6 Financial <sup>4</sup> : 24 Labor: 23 SEC: 35 Other: 1
<b>Microsoft (Hungarian subsidiary)</b>	Microsoft	Labor: 2 SEC: 1

<sup>1</sup> "Labor" includes Labor Department agencies such as the Equal Employment Opportunity Commission and Occupational Safety & Health Administration, and the Office of Federal Contract Compliance Programs.

<sup>2</sup> "Other" includes the Alcohol and Tobacco Tax and Trade Bureau, the Bureau of Industry and Security, the Federal Communications Commission, the Nuclear Regulatory Commission, the State Department Directorate of Defense Trade Controls, and other items with relatively few instances.

<sup>3</sup> "Consumer" includes enforcement actions by the Consumer Financial Protection Bureau, Consumer Product Safety Commission, the Federal Trade Commission, and the Housing and Urban Development Department.

<sup>4</sup> "Financial" includes enforcement actions by the Commodity Futures Trading Commission, Federal Deposit Insurance Commission, Federal Energy Regulatory Commission, Federal Housing Finance Agency, Federal Reserve, National Credit Union Administration, and the Treasury Department.

Corporation Bound by Agreement	Parent Corporation	Prior Federal Enforcement Actions Associated With Parent
<b>HSBC Private Bank (Suisse) SA</b>	HSBC	DOJ civil: 5 DOJ criminal: 3 EPA: 1 Financial: 19 Labor: 8 SEC: 3
<b>Airbus</b>	n/a	FAA: 4 Other: 1
<b>Wells Fargo</b>	n/a	DOJ civil: 9 DOJ criminal: 2 Consumer: 6 Financial: 30 Labor: 21 SEC: 24
<b>Sandoz</b>	Novartis	DOJ civil: 4 DOJ criminal: 2 EPA: 3 Health <sup>5</sup> : 2 Labor: 4 SEC: 2 Other: 1
<b>Chipotle Mexican Grill</b>	n/a	Labor: 13
<b>Novartis Hellas S.A.C.I.</b>	Novartis	DOJ civil: 4 DOJ criminal: 2 EPA: 3 Health: 2 Labor: 4 SEC: 2 Other: 1
<b>Herbalife Nutrition</b>	n/a	Consumer: 1 Labor: 1 SEC: 2

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<sup>5</sup> "Health" includes the Department of Health and Human Services.

Corporation Bound by Agreement	Parent Corporation	Prior Federal Enforcement Actions Associated With Parent
<b>JPMorgan Chase</b>	n/a	DOJ civil: 5 DOJ criminal: 5 Consumer: 6 Financial: 37 Labor: 14 SEC: 23 Other: 2
<b>Goldman Sachs Group</b>	n/a	DOJ civil: 1 Financial: 11 Labor: 3 SEC: 19 Other: 4
<b>Beam Suntory</b>	Suntory Holdings	Labor: 7 SEC: 1 Other: 3
<b>TicketMaster</b>	Live Nation Entertainment	Labor: 8
<b>Boeing</b>	n/a	DOJ civil: 14 DOJ criminal: 1 FAA: 34 Labor: 27 Other: 8
<b>Deutsche Bank</b>	n/a	DOJ civil: 3 DOJ criminal: 4 Financial: 17 Labor: 1 SEC: 16
<b>United Airlines</b>	United Airlines Holdings	DOJ civil: 2 DOJ criminal: 1 EPA: 5 FAA: 464 Labor: 35 Transportation <sup>6</sup> : 24 Other: 2

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<sup>6</sup> "Transportation" includes the Federal Motor Carrier Safety Administration, Federal Railroad Administration and the Transportation Department Aviation Consumer Protection Division.

Corporation Bound by Agreement	Parent Corporation	Prior Federal Enforcement Actions Associated With Parent
FirstEnergy	n/a	DOJ civil: 1 DOJ criminal: 1 EPA: 6 Labor: 22 Other: 2
Credit Suisse	n/a	DOJ civil: 1 DOJ criminal: 2 Financial: 5 SEC: 14

Data Source: [Violation Tracker](#) (produced by the Corporate Research Project of Good Jobs First)

The DOJ's next steps, according to the policy memo, will be guided by a [Corporate Crime Advisory Group](#) that department is internally assembling.

The shift in tone from the Justice Department is a welcome change. Law enforcement officials under the Trump administration referred to the corporations under their jurisdiction as [“partners” or “customers”](#) while allowing corporate crime enforcement to plunge to a [quarter-century low](#). The challenge of reining in corporate criminals after so many years of corporate lawlessness – and not just from the previous administration – will be great. Taking on an appropriately adversarial posture against the profit-driven violators whose offenses cause widespread harm in the U.S. and around the world is just the first step. The proof will be the prosecutions, if and when they come.

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