CLIENT ALERTS & INSIGHTS

Word on the Street: Insights from Federal Enforcement Leaders in the Northern District of California

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Key Takeaways

- Federal enforcement agencies in the Northern District of California are ramping up activity, with the SEC, DOJ and U.S. Attorney's Office all prioritizing cases involving fraud, misrepresentation, antitrust violations and technology sector misconduct, especially related to artificial intelligence.
- Businesses face heightened enforcement risk as agencies move to leverage new AI tools for investigations, increase case filings and encourage whistleblower reports. The focus on tech, healthcare fraud and cross-border activity means companies in these sectors are especially exposed.
- Companies should strengthen compliance programs, proactively address potential issues and consider self-disclosure if problems arise, as regulators reward early cooperation. Staying ahead of enforcement trends and maintaining robust internal controls is critical to managing risk.

Last night, State Attorneys General Enforcement & Investigations Chair Kevin Frankel met with three senior federal enforcement officials in the Northern District of California (covering the San Francisco Bay Area): Craig Missakian, the U.S. Attorney for the Northern District of California; Chris Carlberg, Criminal Assistant Chief of DOJ Antitrust Division's San Francisco Office; and Jason Lee, Associate Director for the Division of Enforcement in the SEC's San Francisco Regional Office. Their remarks offered a candid look at each regulator's current priorities, resource posture and enforcement trajectory. Below is a summary of the key themes from those discussions, followed by our takeaways.

What Enforcement Leaders Said

SEC Enforcement

The Securities and Exchange Commission ("SEC") remains active on both investigative and litigation fronts. Associate Director Lee emphasized that investor protection continues to be the agency's central mandate, with enforcement efforts concentrated on misrepresentation and disclosure failures, market manipulation, insider trading and fraud using artificial intelligence. In a shift from prior enforcement priorities, the SEC plans to deemphasize enforcement actions in the cryptocurrency space, instead focusing on regulation through rulemaking. The SEC filed approximately 450 enforcement actions in the last fiscal year. Lee characterized the agency's priority targets as "liars, cheats and thieves," signaling a continued focus on cases involving clear misconduct and investor harm.

U.S. Attorney's Office, Northern District of California

Over the past year, the U.S. Attorney's Office has pursued a historically low number of charged cases within the district, but recently the office has started to reverse that trend. The office is on track to file 60% more cases than last year and has been charging 76% more defendants. This increase tracks with the office onboarding new attorneys, as hiring freezes imposed across DOJ were lifted for the office.

The low caseload is not the only concern for management within the district. Among the 93 U.S. Attorney's Offices across the country, the Northern District of California ranks among the bottom for case processing speed and is the slowest among the 18 largest districts in the country. One of the strategies proposed for increasing case processing speed is for the office to pursue more pre-indictment dispositions.

Substantively, there are three main areas of focus for the office this year. First, the district has paired up with the District of Nevada to form the West Coast Medicare fraud task force. This will be a key enforcement priority. Second, the district is pairing up with the Eastern District of New York as part of a Homeland Security task force targeting cartels and other international criminal activity.

Most importantly, given the presence of Silicon Valley within the district, the office is highly attuned to the technology sector. Differing from Republican administrations of old, U.S. Attorney Missakian had a message for Silicon Valley: "We're from the government and we are here to help." Practically, this will mean more fraud and trade secret enforcement actions, with a particular focus on AI-related intellectual property. There is a heightened concern that China and Iran are focused on infiltrating Silicon Valley. Individuals with foreign connections will be a priority of the office.

DOJ Antitrust Division, San Francisco Office

The San Francisco office of the DOJ's Antitrust Division covers the Ninth and Tenth Circuits. The office has not faced the severe staffing shortages felt by other DOJ components, with approximately 24 attorneys solely focused on investigating and litigating criminal antitrust cases across the two circuits. Accordingly, it has been able to litigate several notable recent criminal antitrust cases, including securing a guilty verdict in a case involving wage-fixing for healthcare workers, using a novel theory in a labor-market case. The office has also been focused on cross-border issues and bid rigging for government contracts.

The office is keenly focused on two new developments. Across all offices, the Antitrust Division is using artificial intelligence to track pricing history, purchase history and other large datasets to identify prosecutable cases, looking for red flags that could indicate collusion. This includes looking for collusion within AI markets themselves. Additionally, the Antitrust Division launched a new whistleblower reward program in the past year. The program is restricted to employees reporting potential malfeasance. The office still highly recommends self-disclosures by companies, even in the face of the whistleblower program, as leniency is rewarded only to the first party through the door, whether a company or an individual.

Insights

These conversations highlight that the discussions about the death of federal enforcement likely were premature. Both civil and criminal regulators are gearing up to increase enforcement actions. They are leveraging AI and looking to take a targeted but aggressive approach.

It is important to remain vigilant and cautious with any interaction with the government, which continues to incentivize robust compliance functions by allowing for greater leniency for companies that get in front of potential issues and self-disclose before the government gets involved.

Benesch is well situated to help with all of these concerns. Its deep bench of former government enforcement attorneys, along with subject matter experts in healthcare, AI, antitrust and trade secrets, make us well positioned to navigate any government interaction to come to the best outcome.